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REVIEW OF PRIORITY THEMES, IN ACCORDANCE WITH COMMISSION RESOLUTION 1/1 ON STRATEGIC MANAGEMENT BY THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE OF THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME

Progress made on the fourth and fifth surveys of crime trends and operations of criminal justice systems, and other initiatives under way to acquire, process and distribute crime prevention and criminal justice data

Report of the Secretary-General

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INTRODUCTION

A. Legislative background

1. The Commission on Crime Prevention and Criminal Justice, at its first session, listed several priorities to guide its work during the period 1992-1996 and determined one of them as "efficiency, fairness and improvement in the management and administration of criminal justice and related systems, with due emphasis on the strengthening of national capacities in developing countries for the regular collection, collation, analysis and utilization of data in the development and implementation of appropriate policies" (Economic and Social Council resolution 1922/22, section VI). In response to the Council's request made in resolution 1992/22, the Secretary-General submitted to the second session of the Commission a report on the need to identify the most practical course of action to fully operationalize the United Nations crime prevention and criminal justice programme, including financial possibilities (E/CN.15/1993/5). In paragraphs 51-56, the Secretary-General reported on operational research and information gathering and exchange in the context of strengthening clearing-house facilities.

2. On the recommendation of the second session of the Commission, the Council in its resolution 1993/34, section IV, requested the Secretary-General to report to the Commission on progress made on the Fourth and Fifth Surveys of Crime Trends and Operations of Criminal Justice Systems, and other initiatives underway to acquire, process and distribute crime prevention and criminal justice data.

B. Substantive background

3. In all countries, the collection, collation, analysis and dissemination of information appears vital to good governance. Accurate and complete information promotes efficient organization of government by dispelling misconceptions, exposing inefficiency, corruption and biases and, when made public, by serving to hold Governments accountable for their actions. The information derived from the United Nations surveys of crime trends and operations of criminal justice systems, for instance, can be used to review the developments in criminal justice operations at the national level in the context of international trends, policies and standards aimed at humane and efficient justice administration. However, content and provision of such information is dependent upon the socio-technical arrangements of national information systems, including accounting systems, computer equipment and the training of personnel in information management.

4. In both developed and developing countries, what is important is a commitment to foster accountability in criminal justice administration. However, there are substantial differences in the arrangements designed to collect, collate, analyse and disseminate data on crime and justice. This, in turn, results in substantial differences in the quantity, quality and availability of criminal justice information, and in the degree to which the various criminal justice administrators can be held accountable.

5. With the support of Member States to the United Nations crime prevention and criminal justice programme, many of the difficulties experienced by developing countries in the collection, collation, analysis and dissemination of data may be overcome. Developments in computer hardware and software further this objective. In recent years, computer equipment has become more powerful and cheaper. Thus, the computerization of criminal justice systems worldwide, and the openness, understanding and accountability that it facilitates, is a goal that seems closer (see document E/CN.15/1994/3). But again, it may not be achieved without more assistance on the part of Member States and the United Nations crime prevention and criminal justice programme.

I. FOURTH UNITED NATIONS SURVEY OF CRIME TRENDS AND OPERATIONS OF CRIMINAL JUSTICE SYSTEMS (1986-1990)

A. Fourth Survey: data collection

6. It follows from the above that the recurrent United Nations surveys of crime trends and operations of criminal justice systems, including the Fourth Survey, which is the latest one, have yielded some results consonant with the interest of the international community to strengthen the clearing-house functions of the United Nations crime prevention and criminal justice programme. However, the success of the survey depends on the commitment of Member States to provide data. The Economic and Social Council in its resolution 1993/34, section IV, strongly encouraged Governments to continue to reply promptly to requests of the Secretary-General for crime prevention and c iminal justice data in order to ensure that those data can be processed and provided to all Member States and other interested parties in a timely and efficient manner. The Council also reaffirmed the usefulness of these information activities in crime prevention and criminal justice policy development and programme planning, but that usefulness is dependent on the number, timeliness, quality and completeness of the replies.

7. The replies to the Fourth Survey, while potentially very useful, indicate that there is considerable room for improvement in the above areas. With reference to the number and timeliness of the replies, despite launching the Fourth Survey in August 1992, replies are still being received in response to periodical reminders sent by the Secretariat. As of 14 January 1994, 91 replies had been received,* in comparison with 95 for the Third Survey (1980-1986), 77 for the Second Survey (1975-1980) and 64 for the First Survey (1970-1975). An extensive network of offices and individuals has been involved in collecting the replies. This network includes the Permanent Missions to the United Nations, directors of the national statistical offices (contacted separately by the Statistical Division of the Secretariat), resident representatives of the United Nations Development Programme (UNDP), national correspondents in the field of crime prevention and criminal justice and the network of interregional and regional institutes of the United Nations crime prevention and criminal justice programme. The Crime Prevention and Criminal Justice Branch has been notified that, in some instances, the questionnaire had not been forwarded to the responsible criminal justice authorities by the missions which were contacted by the Secretary-General. Moreover, several countries have provided two separate and contradictory replies.

B. Fourth Survey: data processing

8. In the light of the above, and with reference to the quality and completeness of the replies, a preliminary review indicates that considerable improvements can be made without incurring a great

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*From the following countries/territories: Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Bermuda, Botswana, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Hong Kong, Hungary, India, Israel, Italy, Japan, Jordan, Kuwait, Kyrgyzstan, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Myanmar, Nepal, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Puerto Rico, Qatar, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Tonga, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Vanuatu, Venezuela, Yugoslavia and Zimbabwe.

financial cost. The quality of the data, at this time, appears to be the more pressing issue. Seemingly incorrect figures have been entered by many countries in response to several questions; data on convictions have been found entered in response to questions concerning suspects and prosecutions; and where two replies have been received from the same country, the data, as noted, are often contradictory. Such errors force criminal justice professionals and researchers to discount the data sets compiled and analyses thereof. They also demand time-consuming follow-up and data entry operations which cause considerable delays in the distribution of the data. Fortunately, such errors, while impossible to eliminate completely, can be significantly reduced through more careful data entry efforts by respondents. To avoid problems such as these, which inevitably lead to delays in processing and analysis of the data, the survey procedures will have to be reviewed.

9. The preliminary review of the replies also indicates that those received from developed countries tend to be more complete and contain fewer noticeable errors than those from developing countries. This is, perhaps, primarily a result of differentials in resources and the systems established to compile criminal justice data. But it may also reflect differentials in the extent to which such data are regarded as confidential, undisclosed because the distribution of such data is regarded as harmful to the country. In this connection, it seems essential to continue, if not intensify, efforts to improve the criminal justice information systems of developing countries and to promote openness concerning the provision of such information.[1] Efforts of this nature may further governmental accountability for criminal justice activities and, thus, assist the international community in its attempts to constrain oppressive tactics and promote democracy. The Commission may wish to emphasize this point in its considerations, as it appears to underlie efforts oriented towards good governance.

10. An acceptable preliminary data set should be available sometime during the first half of 1994. The data entry process, however, must be viewed as ongoing. Some Member States are still requesting corrections to the data set of the Third Survey. With regard to the Fourth Survey, the Branch began to send follow-up letters concerning questionable data to respondents in October 1993. By 10 December, there had been no replies. This is not to suggest that the data set cannot be used until all replies are received. Rather, it means that researchers and criminal justice professionals must exercise more caution with the earlier versions of the data set.

11. The data from the Fourth Survey, like that of the previous surveys, are being entered into computer files (Statistical Program for Social Sciences - SPSS) in an effort to facilitate quantitative analyses to identify crime trends and other patterns in the data, for example, through validity checks. In view of the small resources allocated for this project, this approach has, however, two related shortcomings. First, it makes the distribution of data in a hard copy (i.e. final) format, for example a publication, difficult. Secondly, while the SPSS files may be preferred by statistically oriented researchers, they tend to be difficult for other criminal justice professionals to utilize. The Commission may wish to consider this issue. There appears to be at least three options: (a) retain the present emphasis on statistical analyses with its limitations; (b) forgo analyses and emphasize the distribution of raw data, leaving it up to the international criminal justice community to analyse the data and draw conclusions; or (c) find additional resources which would allow for both satisfactory analyses and efficient dissemination of the data. The last option seems to be closest to the letter and spirit of General Assembly resolution 46/152, annex, section II, on the creation of an effective United Nations crime prevention and criminal justice programme. It envisages that the principles of the programme shall include regular international surveys to assess trends in crime and developments in the operations of criminal justice systems and, inter alia, on this basis to carry out research and studies at the national, regional and global levels in specific prevention issues and criminal justice measures. One of the purposes of the recurrent crime trends surveys is to demonstrate how the collected data can be meaningfully analysed, so as to encourage similar analyses at the regional and national levels with a view to accountable decision-making in criminal justice matters. It would be very unfortunate if this project were allowed to deteriorate for,

outside of the United Nations, there are perhaps no organizations with sufficient human resources to do a survey on a worldwide basis.

C. Fourth Survey: supplement on trends in transnational crime

12. Pursuant to Economic and Social Council resolution 1992/22, section I, in addition to the Fourth Survey questionnaire dealing with conventional criminality and operations of criminal justice systems, the Secretary-General distributed a supplement on transnational organized crime. This pilot questionnaire requests Governments and international organizations to provide information on this subject. Because of legal and technical difficulties involved in surveying the question of transnational crime, the Branch does not expect replies of the same value as those received in response to the main part of the questionnaire. The results of this inquiry will be made available before the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. While the replies are being processed* (and more are expected), the Commission may wish to encourage Governments and international organizations to give due consideration to the question of transnational organized crime by sharing their experiences in measuring transnational crime and its impact on the society.

II. FIFTH UNITED NATIONS SURVEY (1990-1993) AND INITIATIVES TO ANALYSE AND DISSEMINATE CRIME-RELATED DATA

A. Fifth Survey: questionnaire design and proposed course of action

13. Pursuant to the resolution of Council resolution 199/22, section I, paragraph 3 (f), the Secretary-General was requested to commence preparations for the Fifth Survey at the end of 1993. In December 1993, work started on the design of the questionnaire, with efforts being made to overcome the shortcomings identified during the Fourth Survey exercise. It is anticipated that the survey instrument will be sent out not later than the third quarter of 1994, with a response deadline proposed for mid-1995.

14. The Fifth Survey will cover the years 1990-1993 - 1990 being the overlapping year included in both the Fourth and Fifth Surveys, to check the reliability of the responses. As requested by the Council in the above resolution, the Survey will henceforth be conducted on a biennial basis, with the Sixth Survey collecting data for the years 1993-1995. While this may significantly improve the timeliness of data dissemination, it will also demand more resources and should, once again, bring attention to the need to decide precisely what type of data processing warrants the highest priority.

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*As of 14 January 1994, the following countries and international organizations had submitted their replies: Argentina, Austria, Belarus, China, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Hungary, Israel, Kiribati, Mongolia, Myanmar, Oman, Panama, Peru, Poland, Portugal, Qatar, Republic of Korea, Spain, Sudan, Switzerland, Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Tonga, Uganda; Caribbean Community Secretariat, Baltic and International Maritime Council, Council of Europe, International Council on Social Welfare, International Maritime Organization, Interpol, Nordic Council.

B. Initiatives to analyse and disseminate crime-related data

1. Report on crime and justice in the world

15. After the issuance of the publication on Trends in Crime and Criminal Justice, 1970-1985, in the Context of Socio-Economic Change,[2] which presented the results of the Second Survey and Crime Trends and Criminal Justice Operations at the Regional and Interregional Levels,[3] which reported on the results of the Third Survey, as determined by the Council in its resolution 1922/22, section I, the Secretary-General included in the 1994-1995 programme budget provision for a publication on the results of the Fourth Survey entitled Report on Crime and Justice in the World. Envisaged as a regular biennial global report on crime and justice, this publication, inter alia, will be modelled after the successful Human Development Report, published annually by UNDP.

16. The idea for the crime report was developed in three stages at meetings organized on the initiative of the United Nations Interregional Crime and Justice Institute at Rome (UNICRI). At the first session of UNICRI in 1991, experts began to conceptualize the outline of the publication, which was reported to the Commission at its second session (E/CN.15/1993/8/Add.1, para. 32; E/CN.15/1992/CRP.2). At the second session, held from 25 to 26 June 1992, the experts developed the table of contents of the publication, based on the progress made in obtaining Fourth Survey data. At the third session, held from 27 to 28 May 1993, they planned the division of labour among the drafters and set the deadlines for the completion of the report (E/CN.15/1994/10).

17. Unlike the UNDP report, which is fully budgeted, both the funding and drafting of the report on crime and justice is based mostly on voluntary contributions made by the Governments of the Netherlands (Ministry of Justice), the United Kingdom of Great Britain and Northern Ireland (Home Office), the United States of America (Bureau of Justice Statistics, Department of Justice), the Australian Institute of Criminology and a number of criminologists who have been partly financed by UNICRI. Only part of the time of one staff member and the printing of the crime report is covered by the regular United Nations budget. The issuance of the crime report was planned to coincide with the Ninth United Nations Congress in 1995. This plan is jeopardized by delays in submitting the replies by some countries which informed the Branch of their intent in being included in the survey exercise. This, combined with prolonged data validation and a vacated post for a staff member involved directly in the Fourth Survey project, make it more likely that the report will not be published before the end of 1995.

2. UNCJIN Crime and Justice Letter

18. In accordance with the 1992-1993 programme budget, the Branch began publishing the "UNCJIN Crime and Justice Letter", which it is anticipated will be issued regularly. A special issue of the Letter, presenting analyses of data from the first three surveys, was distributed at the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, held at Versailles, from 21 to 23 November 1991. The first regular issue of the Letter (volume 1, Nos. 1/2, 1993), in addition to providing information on the objectives of United Nations Criminal Justice Information Network (UNCJIN) and how it operates, presents information on the Fourth Survey and a substantive article on global trends in criminal victimization, prepared by UNICRI.* This issue has already reached a large audience, including national correspondents, criminal justice professionals, representatives of statistical offices, heads of criminal justice institutes, individual researchers and the members of UNCJIN. One development was the interest of recipients to join the Network, expressed in letters to the Branch.

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*A limited number of copies of this issue are available to the Commission.

19. The second regular issue of the Letter (No. 3) was scheduled to be published in the second quarter of 1994. The Letter will include a report on developments concerning the World Criminal Justice Library Network; a report on trends in urban security in the world's largest cities, based on data from the Third and Fourth Surveys; and a report on services available through the Internet, a computer network which currently hosts UNCJIN. However, owing to the financial crisis of the Organization, this issue has been suspended until further notice.

20. The third regular issue (No. 4) is scheduled for release at the time of the Ninth United Nations Congress. It will, inter alia, report on trends of violence in the world, based on data from the Fourth Survey.

3. Regional analyses and publications of survey data: the work of the Institutes

21. Since 1985 the Branch has cooperated with several institutes in the regional analysis and publication of data from the Surveys. In connection with the Second and Third Surveys, the European Institute for Crime Prevention and Control, affiliated with the United Nations,* published Criminal Justice Systems in Europe[4] and Criminal Justice Systems in Europe and North America;[5] the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) produced Delineation of Crucial Issues of Criminal Justice in Asia (A/CONF.121/UNAFEI); UNAFEI, together with the Australian Institute of Criminology (AIC), published Crime and Justice in Asia and the Pacific;[6] and the Latin American Institute for the Prevention of Crime and Treatment of Offenders prepared a report on crime prevention in the context of development ("Tercer estudio de las Naciones Unidas sobre tendencias delictivas, funcionamiento de sistemas de justicia penal y estrategias de prevencion del delito") for the Eighth United Nations Congress.

22. With reference to the regional analysis and publication of Fourth Survey data, this cooperation continues. The European Institute is preparing a third publication on criminal justice systems in Europe. Because the data received from European countries tends to be complete and consistent, the report of the European Institute may be more elaborate than the other regional reports. It may also be presented as a model for future regional analyses of crime trends and criminal justice systems, without losing sight of the legal and socio-political differences between regions. UNAFEI and the AIC are also preparing a third report on crime and justice in Asia and the Pacific. It is anticipated that the report will include analyses from a socio-economic perspective.

23. Other institutes were invited to present regional analyses of the Fourth Survey data, as determined in Economic and Social Council resolution 1992/22, section I. The Secretariat anticipates that the African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) will publish its first regional report covering 14 African countries. However, in view of the rather small number of Arab countries that provided a substantial amount of information, a report on the Arab region appears unlikely. Means of resolving this unfortunate situation have been discussed with representatives of the Arab Institute for Security and Training Studies.

24. It is expected that all of these Fourth Survey publications will be available at the time of the Ninth United Nations Congress.

25. The Commission may wish to know that portions of the data in the form of country criminal justice profiles have been available in an electronic format through UNCJIN on the Internet. After completion

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*Formerly called the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI).

of the Fourth Survey exercise, these profiles will be updated. Fourth Survey data in the form of time series will also be added to UNCJIN and, thus, be available sooner to its members, probably at the end of 1994.

III. CONCLUSIONS

26. On the basis of the preceding observations, certain conclusions emerge which may serve as a basis for discussion at the third session of the Commission.

27. First, the experience gathered by the Secretariat in the collection, collation, analysis and utilization of crime prevention and criminal justice data, as reviewed above, indicates that while regional and interregional interest in this activity has increased considerably, the capacity of the crime prevention and criminal justice programme would need to be strengthened in order to meet the expectations of the international criminal justice community and to provide adequate assistance to developing countries which are striving to improve their criminal justice databases and promote good governance (see paras. 3 and 9, above).

28. Secondly, in an effort to make the United Nations surveys more efficient and useful, the Commission may wish to establish specific, concrete priorities for the processing of survey data, without losing sight of the corresponding resource requirements (see para. 11, above).

29. Thirdly, the Commission may wish to encourage Governments and international organizations to give due consideration to the question of transnational organized crime by sharing their experiences in measuring transnational crime and its impact on society (see para. 12, above).

30. Fourthly, the Commission may wish to suggest specific topics that should be dealt with in future issues of the UNCJIN Crime and Justice Letter, keeping in mind that it should offer its readers a review of developments in UNCJIN and updates on trends in crime and criminal justice operations around the world (see para. 20, above).

Notes

[1]Manual for the Development of Criminal Justice Statistics, Studies in Methods, Series F, No. 43 (United Nations publication, Sales No. E.86.XVII.16).

[2]United Nations publication, Sales No. E.92.IV.3.

[3]United Nations publication, Sales No. E.94.IV.2.

[4]Publications series No. 5 (Helsinki, HEUNI, 1985).

[5]Publication series No. 17 (Helsinki, HEUNI, 1985).

[6]Canberra and Tokyo, UNAFEI and AIC, 1990.

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Progress made in the improvement of computerization in criminal justice management, with emphasis on strengthening national capacities for the collection, collation, analysis and utilization of data

Report of the Secretary-General

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*E/CN.15/1994/1.

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INTRODUCTION

A. Legislative background

1. The Commission on Crime Prevention and Criminal Justice, at its first session, listed several priorities to guide its work during the period 1992-1996 and determined one of them as: "Efficiency, fairness and improvement in the management and administration of criminal justice and related systems, with due emphasis on the strengthening of national capacities in developing countries for the regular collection, collation, analysis and utilization of data in the development and implementation of appropriate policies" (Economic and Social Council resolution 1992/22, section VI). In response to the Council's request made in that resolution (section I), the Secretary-General submitted to the second session of the Commission a report on the need to identify the most practical course of action to fully operationalize the United Nations crime prevention and criminal justice programme, including financial possibilities (E/CN.15/1993/5). In paragraphs 51-56, the Secretary-General reported on operational research and information gathering and exchange in the context of strengthening clearing-house facilities.

2. On the recommendation of the second session of the Commission, the Council in its resolution 1993/34, section IV, requested the Secretary-General to report to the Commission on progress made in the improvement of computerization in criminal justice management, with emphasis on strengthening national capacities for the collection, collation, analysis and utilization of data.

B. Substantive background

3. As noted in document E/CN.15/1994/2, paras. 3-5, the collection, collation, analysis and dissemination of information appears vital to good governance, which among its many purposes includes accountability of criminal justice administrators on a national and international level. However, availability and use of such information for this many purposes is dependent upon many political and legal factors, including institutional and socio-technical arrangements of national information systems, that is, how national accounting systems are organized and function, how personnel is trained in information management and on related availability of modern equipment (computers, scanners, telephone lines etc.).

4. As there are substantial differences in the socio-technical arrangements designed to collect, collate, analyse and disseminate data on crime and justice, there are substantial differences in the quantity, quality and availability of criminal justice information, and in the degree to which the various criminal justice administrators can be held accountable. In this connection, computerization can no longer be considered a luxury affordable only to wealthy countries. It seems important for all countries. By facilitating efficient information systems, computerization promotes greater openness, understanding and accountability.

I. COMPUTERIZATION IN CRIMINAL JUSTICE MANAGEMENT

A. Strengthening national capacities for the collection, collation, analysis and utilization of data

5. It may be recalled that the involvement of the United Nations crime prevention and criminal justice programme in the field of computerization dates back to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.[1] However, only after a rapid advance in computerization, which started in the early 1980s, has the programme made substantial progress in this field, culminating with the adoption of General Assembly resolution 45/109 of 14 December 1990 on the computerization of criminal justice. This resolution has led to initiatives to develop a comprehensive

plan in this field, as recommended by the Eighth United Nations Congress.[2] In this connection, the Secretariat of the United Nations published a Guide to Computerization of Information Systems in Criminal Justice[3] and cooperated in the issuance of the Directory of Criminal Justice Information Programs, published by the European Institute for Crime Prevention and Control, affiliated with the United Nations.* The Crime Prevention and Criminal Justice Branch has also finalized the preparation of the Manual on Prevention and Prosecution of Computer related Crime", which was drafted on the initiative and with the support of the Government of Canada. The Manual is now being published as issue 43 of the International Review of Criminal Policy.

6. The above-mentioned mandate by the Council and the resulting publications indicate that a good foundation has been established for the planning of computerization projects in the area of criminal justice management. On this basis, the United Nations crime prevention and criminal justice programme, represented by the Helsinki Institute on Crime Prevention and Control (HEUNI), undertook several needs assessment missions at the requests of the Governments of Bulgaria, Cuba, Nepal, Russian Federation and Slovenia. The specific purpose of these missions was to determine the type of assistance that could be provided to national projects on the computerization of criminal justice management that have taken place (Bulgaria) or are planned to commence (Nepal, Russian Federation and Slovenia). Additionally, at the request of the Government of Albania, the United Nations Office at Vienna undertook a general needs assessment mission concerning the criminal justice system of that country, which included an assessment of the computerization needs in criminal justice management.

7. Observations on these projects suggest that the success of computerization endeavours requires thorough planning of the whole undertaking. They also indicate that it is necessary to establish consistent and lasting political commitment at the executive level, to train trainers and to establish the capacity to maintain and develop the information systems. (In contrast, the availability of computer equipment appears to be a relatively minor problem.) Computerization is a means of strengthening the democratization process, this specially pertains to the developing countries. Therefore, computerization in the law enforcement sector has to be related to similar processes in prosecution, courts and prisons, and public administration at large, so as to enable the entire criminal justice system to coordinate its internal actions in line with the checks and balances it needs to have in order to be evaluated as functioning in a democratic manner. The Commission may wish to exchange experiences in this area and, in particular, to review ways and means of assisting Member States in the preparation of project proposals that contain the requisite elements.

8. It must be noted that in implementing such complex projects, the United Nations crime prevention and criminal justice programme has only one expert temporarily available through the good offices of the Ministry of Justice of the Netherlands, at the request of the European Institute. Although the Commission has assigned priority to the modernization of criminal justice systems, the present capacity of the programme is not commensurate with that priority. This is evidenced in the context of General Assembly resolution 45/109, in which the Assembly requests the Secretary-General to establish an international group of experts dealing with projects on the computerization of criminal justice administration. The Assembly envisaged that the group would report regularly to the Secretary-General on experiences in the computerization of criminal justice; oversee the establishment of a technical cooperation programme; monitor the activities of that programme; inform Member States of the potential availability of funds and services from various donors in the governmental, intergovernmental and private sectors; inform such donors of the needs of Member States for assistance; and consult with

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*Formerly called the Helsinki Institute on Crime Prevention and Control, affiliated with the United Nations (HEUNI).

relevant experts in the private sector. As there are no funds to establish such a group, the General Assembly resolution cannot be implemented.

9. The Commission may wish to consider means of securing extrabudgetary support for the establishment of such an expert group and criminal justice system computerization in general. For instance, it may be possible to recruit experts through arrangements similar to those worked out between the Government of the Netherlands and the European Institute; or Member States may wish to participate by seconding middle- and upper-level professionals who would be willing to work on a volunteer basis in developing countries in the framework of the United Nations Volunteer Programme. Such approaches would be in line with the request of the Council that the Secretary-General continue and intensify efforts directed at the modernization of criminal justice techniques and administration, with special attention to the needs of developing countries, including the introduction of compatible information technology to facilitate the administration of criminal justice and to strengthen practical cooperation on crime control between Member States (Council resolution 1993/34, section IV).

B. Transfer of the United Nations Criminal Justice Information Network

10. The United Nations Criminal Justice Information Network (UNCJIN) is a computer network designed to facilitate the exchange of information among criminal justice policy makers, professionals and researchers around the world. It provides a range of traditional services, including electronic mail and the provision of access to the networks of several United Nations agencies, such as the United Nations International Emergency Network and the Electronic Information Network of the United Nations Children's Fund (UNICEF), and to newswires, including Associated Press, United Press International and Reuters; and it offers a wide variety of criminal justice information databases.

11. UNCJIN, which now operates on the Internet, one of the world's largest computer networks, has also other dimensions. First, there is the UNCJIN-L "Listserv". It provides the communication medium for a discussion group that has a fast-growing membership of about 300 subscribers. Electronic mail sent to UNCJIN-L is automatically forwarded to all subscribers. Thus, members receive an abundance of information from around the world, ranging from opinions and data on current criminal justice issues to job and conference announcements. Moreover, for everyone equipped to send electronic mail over the Internet, it is very easy to join the group. To subscribe, it is only necessary to send a simple one-line message to the Listserv.

12. Secondly, there is the UNCJIN "gopher". The UNCJIN gopher is a user-friendly system that allows access to a wide variety of criminal justice and legal information from around the world. Gateways to distant computers are made automatically and in an instant. Although the number of UNCJIN gopher users has still not been determined, there is reason to believe it is very large. There is evidence that other Internet gophers provide their users with access to the UNCJIN gopher, making it more available to a wider audience. What is more impressive is that the UNCJIN gopher is constantly evolving and expanding. At the moment, it provides access to United Nations standards, guidelines and international instruments; profiles of criminal justice systems throughout the world; summaries of the latest United States Supreme Court decisions; international criminal justice statistics from the United Nations surveys of crime trends and operations of criminal justice systems; an annotated list of publication outlets in criminal justice and criminology; the World Directory of Criminological Institutes; the Maastricht Treaty on European Union; documents from the World Health Organization; the on-line catalogues of several major criminal justice and law libraries around the world; the daily press releases of the United Nations Information Service; and many other databases and networks. The most recent initiative involves publication of the electronic digest of the United Nations crime prevention and criminal justice programme which contains excerpts from and full documents of the United Nations on current crime and justice issues. While connecting to the UNCJIN gopher is more complicated than connecting to UNCJIN-L,

most criminal justice agencies and research institutes around the world will probably find that it is easier and cheaper than operating UNCJIN through another computer network, the TCN/Dialcom, a system serviced by Telecommunications Computer Network, which UNCJIN was with originally.

13. Until the beginning of 1993, the entire UNCJIN system was operated out of the School of Criminal Justice of the State University of New York at Albany. In August 1993, the system operations of the TCN/Dialcom component were transferred to the Branch. At that time, it was decided that this component of UNCJIN would be phased out, in view of the greater information resources available on the Internet. A strategy was then designed for the purpose of moving the members of the TCN/Dialcom system over to the Internet. In November, the move was announced and information on the Internet, including connection information, was mailed to all of the members of UNCJIN on TCN/Dialcom.* As of the beginning of 1994, UNCJIN was fully transferred to the Internet and exists on that system only.

14. By greatly enhancing the cross-national exchange of information and ideas, UNCJIN already provides the international criminal justice community with a very important service. The planning of future developments of UNCJIN should be comprehensive. For instance, it should include proposals for the technical upgrading of the computer hardware and software that make the UNCJIN gopher and UNCJIN-L possible. It should involve inquiries into opening gateways to the computerized criminal justice information databases of the interregional and regional institutes, Member States and the numerous criminal justice research institutes around the world. It should also include concrete strategies to increase membership. In accordance with the Commission's request outlined in Council resolution 1993/34, section VI, such strategies should emphasize support for criminal justice professionals and researchers from developing countries who do not have the necessary resources or skills to access and utilize the services available on UNCJIN.**

15. The Economic and Social Council in its resolution 1993/34 expressed its appreciation to the Bureau of Justice Statistics of the United States Department of Justice and the State University of New York for their support in the development of UNCJIN. The Council requested the Secretary-General to allocate the necessary services for the transfer of the management and daily operations of UNCJIN to the Crime Prevention and Criminal Justice Branch. It also invited Member States to consider the provision of extrabudgetary resources, including but not restricted to the secondment of computer-programming professionals with criminal justice experience to the Secretariat in order to assist in the orderly transfer of UNCJIN and to provide support for its further logistical and substantive development. In the absence of the support requested from Member States, between the second and third sessions of the Commission the Secretary-General recruited one staff member who was involved in the transfer of UNCJIN as well as having other duties relating to the collection, processing and dissemination of data from the recurrent United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems.

16. At the time of writing, however, the above-mentioned post is vacant, so the operations of UNCJIN continue to be carried out by the School of Criminal Justice of the State University of New York. Pending recruitment of a new staff member as system operator, there persists a danger of discontinuing the

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*The Coordinator of UNCJIN has published a brochure that provides useful information for people interested in joining UNCJIN on Internet. A limited number of copies of that brochure are available to the Commission.

**The European Institute for Crime Prevention and Control, affiliated with the United Nations, the Catalonian Police School, and the Coordinator of UNCJIN plan to organize a training course for individuals interested in UNCJIN on Internet.

work of UNCJIN, as at the moment it cannot be properly supported by the Branch either organizationally or financially.

17. By and large, the present resources of the Branch may not allow UNCJIN on the Internet to be transferred to the Branch as it now exists. If a new staff member is recruited, it may be only possible to transfer UNCJIN-L (the electronic mail discussion group), however, the transfer of the UNCJIN gopher may necessitate significant alterations in its scope and development. In this connection, both monetary and technical assistance are urgently needed.

18. As a result of distributing issue 1/2 of the "UNCJIN Crime and Justice Letter" the number of members is still increasing (see also document E/CN.15/1994/2), but the Network has not even begun to reach its full potential. The Commission, therefore, may wish to give special attention to this issue and reassert its requests and invitations for the resources necessary to complete the transfer of UNCJIN and ensure its continued development.

19. Some actions of the Commission in support of UNCJIN, however, do not require, financial commitment and may be taken very promptly. One of the effective ways of showing the international community that the Commission attaches importance to the worldwide provision of information to criminal justice agencies and experts is to enlist the criminal justice agencies of the countries currently represented on the Commission as members of UNCJIN. The Chief of the Crime Prevention and Criminal Justice Branch made this proposal in letters sent directly to the heads of the delegations to the third session of the Commission.

20. Finally, the Commission may wish to consider changing the name of the United Nations Criminal Justice Information Network to the United Nations Crime and Justice Information Network. The proposed change would reflect the more general nature of the UNCJIN databases and discussion group topics. It would also allow for a distinction to be made between crime prevention and criminal justice, without excluding either.

C. Crime and justice databases in the Crime Prevention and Criminal Justice Branch

21. The General Assembly in its resolution 46/152, annex, stressed the need to enhance the collection, exchange and dissemination of information among States on crime prevention and criminal justice. Collection and automation of this information was requested as well by the Economic and Social Council in its resolution 1992/22. In view of these resolutions and in connection with the computerization of criminal justice management, efforts are underway to design and implement a computerized database system for the purpose of processing and disseminating data on, among other things, crime prevention measures and projects, national legislation on money laundering, the freezing and forfeiture of the proceeds of crime and the monitoring of large-scale cash transactions, legislation related to model treaties on extradition, and mutual assistance in criminal matters and transfer of proceedings.

22. The project, as it is now proposed, will involve the adaptation of the Clearinghouse Database on Disability-Related Information (CLEAR). The CLEAR database software was originally designed for the Disabled Persons Unit of the former Social Development Division, United Nations Office at Vienna.* CLEAR is a sophisticated database system that facilitates the processing and dissemination of information. It is an advanced application of the Micro CDS/ISIS of the United Nations Scientific, Educational and Cultural Organization.

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*The CLEAR system was initially developed with a contribution from the Government of Sweden and a grant from the United Nations Voluntary Fund on Disability.

23. An adaptation of the CLEAR software is particularly attractive in that it may be freely distributed and operated with rudimentary computer equipment. Thus, it may be utilized by criminal justice administrators in both developed and developing countries without large financial investment. However, difficulties in attaining this goal rest on the lack of resources to adapt the software, process and collect information, and train users. Given the present limitations, it is therefore unlikely that the project will continue at a pace commensurate with the needs of the United Nations crime prevention and criminal justice programme. The Commission may wish to request extrabudgetary support from Member States to ensure the completion of this project.

D. Roster of experts

24. In accordance with General Assembly resolution 46/152, annex, section II, para. 17, and Economic and Social Council resolution 1992/22, section I, the Crime Prevention and Criminal Justice Branch was directed to establish and maintain a roster of experts to facilitate technical assistance projects and training activities. This was to be done in close cooperation with a variety of national, regional, interregional and international institutions and training agencies, as part of its clearing-house function. Assisted by UNICRI, the Branch has begun to establish a computerized roster of experts. The roster will include experts from different disciplines and with practical experience in the field of crime prevention and criminal justice. Maintenance of the roster will be an ongoing process.

II. CONCLUSIONS

25. On the basis of the preceding observations, conclusions emerge that may serve as a basis for discussion at the third session of the Commission.

26. First, the Commission may wish to suggest ways of establishing an expert group on matters related to the computerization of criminal justice management which would have a standing mandate to promote technical cooperation projects in this area (paras. 7-9, above).

27. Secondly, the Commission may wish to give special attention to the transfer and further development of UNCJIN, without losing sight of its potential utility (paras. 15-17, above).

28. Thirdly, the Commission may wish to change the name of the "United Nations Criminal Justice Information Network" to the "United Nations Crime and Justice Information Network" (para. 20, above).

29. Fourthly, the Commission may wish to offer recommendations on further steps in the development of an automated database system in the Crime Prevention and Criminal Justice Branch, including the possible secondment of staff to the Branch with a view to initiating the adaptation of software, data collection and data entry (paras. 21-23, above).

30. Finally, in accordance with Economic and Social Council resolution 1992/22 and General Assembly resolution 46/152, annex, the Commission may wish to encourage and give support to the maintenance of a roster of experts (para. 24, above).

Notes

[1]Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980 (United Nations publication, Sales No. E.81.IV.4), part three, chap. IV, sect. B, resolution 2, paragraph 55.

[2]Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990 (United Nations publication, Sales No. E.91.IV.2), part one, chap. I, sect. A, resolution 3.

[3]Studies in Methods, series F, No. 58 (United Nations publication, Sales No. E.92.XVII.6).

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REVIEW OF PRIORITY THEMES, IN ACCORDANCE WITH COMMISSION RESOLUTION 1/1 ON STRATEGIC MANAGEMENT BY THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE OF THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME

Status of the preparations for the World Ministerial Conference on Organized Transnational Crime

Report of the Secretary-General

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*E/CN.15/1994/1.

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INTRODUCTION

1. On the recommendation of the Commission on Crime Prevention and Criminal Justice, the Economic and Social Council adopted resolution 1993/29 of 27 July 1993, on the World Ministerial Conference on Organized Transnational Crime. In that resolution, the Council requested the Secretary-General to organize, without real growth implications for the overall United Nations budget for the biennium 1994-1995, a World Ministerial Conference on Organized Transnational Crime, to be held in the third quarter of 1994. Also in that resolution, the Council accepted with appreciation the offer of the Government of Italy to act as host to the Conference.

2. The General Assembly, in its resolution 48/103 of 20 December 1993, expressed its support for the World Ministerial Conference and requested the Secretary-General to take all measures necessary to ensure its adequate organization and to submit its conclusions and recommendations to the Assembly at its forty-ninth session.

3. The present report, submitted pursuant to Economic and Social Council resolution 1993/29, provides an account of the activities carried out to date, in preparation of the World Ministerial Conference, as well as a brief overview of the substantive matters that the Conference should consider. It also includes an outline of the activities needed to be carried out in the near future to ensure the timely organization of the Conference.

4. The Economic and Social Council, in its resolution 1993/30 of 27 July 1993, welcomed with appreciation the initiative of the Government of Italy and the International Scientific and Professional Advisory Council in organizing, under the auspices of the Crime Prevention and Criminal Justice Branch, the International Conference on Laundering and Controlling Proceeds of Crime: a Global Approach, to be held in Italy in June 1994. In its resolution 48/103, the General Assembly also welcomed that initiative. The present report gives an overview of the preparations for the International Conference and of the issues that it is expected to consider.

5. The Economic and Social Council, in its resolution 1993/34, section I, of 27 July 1993, reaffirmed the priority themes formulated by the Commission on Crime Prevention and Criminal Justice at its first session and contained in Council resolution 1992/22, section VI, of 30 July 1992. Organized transnational crime figures prominently among those priority themes, as concern among Member States continues to grow over the multiple aspects of that type of criminal activity. The addenda to the present report (E/CN.15/1994/4/Add.1-3) provide a focused analysis of some of those aspects, with proposals for further action.

I. WORLD MINISTERIAL CONFERENCE ON ORGANIZED TRANSNATIONAL CRIME

A. Organizational matters

6. At the initiative of the Italian Government, a Joint Executive Committee has been established, composed of representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Interior, the Permanent Mission of Italy to the United Nations Office at Vienna and the Crime Prevention and Criminal Justice Branch. The Committee is charged with overseeing organizational matters of the World Ministerial Conference. In a meeting held on 21 January 1994, the Committee reviewed the activities that had been carried out and discussed administrative arrangements. It also appointed a National Coordinator and an Executive Coordinator for the World Ministerial Conference.

The National Coordinator has overall responsibility for the input required by the various authorities at the national level. A provisional secretariat for the World Ministerial Conference has been established to assist the National Coordinator. The appointment of the National Coordinator and the Executive Coordinator will greatly facilitate preparations, particularly in view of the need for focal points and constantly open channels of communication with the host Government. The National Coordinator has requested all ministries and government departments concerned to appoint up to three officials each as members of the National Organizing Committee. As of January 1994, the Italian Government has provided the Branch with three associate experts to assist in the preparations for and follow-up to the World Ministerial Conference. An additional associate expert will be joining the Branch in the course of 1994.

7. The Government of Italy has proposed that the World Ministerial Conference be held at Naples from 24 to 26 October 1994. The Government has indicated its intention to place at the disposal of the Conference the facilities that will be used in July 1994 for the annual economic summit of the heads of State or Government of the Group of Seven major industrialized countries and the President of the Commission of the European Communities (CEC).

8. The Italian Government has been apprised of the requirements for the World Ministerial Conference, according to standard United Nations practice and procedures. A technical mission should soon be undertaken to inspect the facilities. Its purpose is to ensure that the facilities conform to the standards required by the United Nations for world conferences (the availability of conference rooms with the capacity to accommodate the delegations of all Member States, interpretation facilities, facilities for processing documents, hotel accommodations etc.).

9. After certification of the suitability of the facilities, the Italian Government and the Secretariat will begin consultations for the finalization of a host government agreement, pursuant to General Assembly resolutions 31/140, section I, of 17 December 1976, 40/243, section I, of 18 December 1985 and 47/202 A of 22 December 1992. After the agreement has been concluded and the differential costs have been deposited, the Secretary-General will extend invitations to all Member States, intergovernmental organizations and non-governmental organizations to attend the World Ministerial Conference.

10. The results of the technical mission and further progress in the organization of the World Ministerial Conference will be reported to the Commission at its third session.

B. Substantive matters

11. The unanimous acceptance and support of the World Ministerial Conference by the Commission, the Economic and Social Council and the General Assembly are evidence that the international community is concerned over the threat posed by organized transnational crime. They also attest to the willingness of Member States to improve their joint efforts, at the global level, to effectively combat the most pernicious forms of criminal activity. The World Ministerial Conference will provide a forum for the collective manifestation of this political will and determination.

12. In pursuance of Council resolution 1993/29, the World Ministerial Conference will have the following objectives:

(a) To examine the problems and dangers posed by organized transnational crime in the various regions of the world;

(b) To consider national legislation and to evaluate its adequacy to deal with the various forms of organized transnational crime and to identify appropriate guidelines for legislative and other measures to be taken at the national level;

(c) To identify the most effective forms of international cooperation for the prevention and control of organized transnational crime at the investigative, prosecutorial and judicial levels;

(d) To consider appropriate modalities and guidelines for the prevention and control of organized transnational crime at the regional and international levels;

(e) To consider whether it would be feasible to elaborate international instruments, including conventions, against organized transnational crime.

These objectives, which reflect the primary concerns of Member States regarding the need for efficient and effective global action against organized transnational crime, are expected to form the basis of the agenda for the World Ministerial Conference.

13. In accordance with its first objective, the World Ministerial Conference will take stock of the problems and dangers posed by organized transnational crime throughout the world. Organized criminal activity is no longer affecting developed regions only. Recent evidence has shown that developing countries are faced with significant problems created by the emergence of criminal groups and their activities. Developing countries are confronted with groups engaging in a variety of criminal activities, often moving away from more "traditional" endeavours, such as illicit drug production and trafficking, into equally lucrative areas that attract less attention. In other cases, criminal groups are diversifying their activities by reorganizing their operations in a more sophisticated fashion, limiting the use of force and violence and turning to other means of persuasion. Organized crime in developing countries is also adapting its operations to the new political and economic realities, taking full advantage of the efforts made by many Governments to open up their national borders to free trade and to improve the competitiveness of their national economies. Thus, organized crime is profiting from new pacts and cooperative arrangements, posing a long-term threat to sustainable development.

14. Because of their vulnerability and their untapped resources, countries in transition are being targeted by organized criminal groups operating across borders. Such criminal groups are taking advantage of the urgent need for foreign investment capital faced by Governments trying to reform their national economies according to free-market principles. This is occurring at a time when institutions are either young or in the process of being established. The criminal justice systems of countries in transition, in which organized criminal activities were previously almost unknown, are often no match for such criminal groups, with their sophisticated modus operandi. The need for foreign capital to give new life to national economies and to assist countries in entering today's competitive and demanding global market frequently obscures the long-term threat posed by the investment of criminal proceeds. Criminal groups are keen to enter the economies of countries in transition, not only because of the potential such economies offer, but also because of the relatively low risks involved. Such groups enjoy certain advantages because of the sizeable amounts of money at their disposal and their ability to eliminate competition through intimidation and violence; consequently, risks that might seem daunting to legitimate business entrepreneurs are perfectly acceptable to such groups. The consolidation of the power of criminal groups places in grave danger the growing economies of the countries in transition, particularly in terms of their future development, their competitiveness in the international arena and their stability.

15. Organized criminal groups are also forming new alliances spanning all regions of the world. Their operations are expanding in activities and commodities that previous geopolitical balances had made inaccessible. Recent findings suggest that organized criminal groups have already obtained strategically sensitive materials and technology. Such materials and technology may be bought or bartered at favourable rates; some of it is obtained by terrorist groups, in return for the protection of organized criminal operations. Such trade poses a threat to international peace, security and relations. The world community should respond to that threat immediately, while preventive action is still possible. The World Ministerial Conference will provide a forum for Governments, represented at the highest possible level, to exchange information and experiences. A thorough assessment of the identity of modern organized transnational crime will help Member States come to terms with the actual dimensions of the problem and will thus contribute to the attainment of the other objectives of the World Ministerial Conference.

16. Pursuant to its second objective, the World Ministerial Conference is expected to examine ways to make national legislation more able to cope with the various forms of organized transnational crime. National approaches to the prevention and control of organized transnational crime vary considerably. The reasons for those variations range from differences in perceptions about the actual size of the problem and the threat posed by organized criminal groups to differences in the features of legal systems, including legal theory and judicial practice. Differences in national legislative and other measures enable criminal groups to shift their operations across national borders in order to evade detection and prosecution, and thus continue to maximize their profits with impunity.

17. In their efforts to prevent or control organized transnational crime, national authorities are often confronted with obstacles such as the flexibility and versatility of the modus operandi of the perpetrators. Other obstacles include increasing diversification of operations and the restructuring capacity of criminal groups, who often use modern business techniques and obtain the best available professional advice. Another major obstacle is the broad range of activities in which organized transnational crime is involved. National legislation is often geared towards identifying and prescribing activities that, in the past, formed the core of organized criminality. The adoption of measures to modernize legislation, the establishment of regulatory mechanisms to supplement it and the penalization of certain forms of behaviour to avoid gaps in legislation are essential. National approaches to fighting organized transnational crime should take into account present-day realities. Thus, national authorities could be more effective in preventing and controlling the various forms of organized criminal activity by bearing in mind the fact that their efforts would have an effect beyond their national borders. Often cited impediments to effective action against organized criminal groups include the limited reach of national legislation or the conflicts of jurisdiction that allow transnational offenders to escape justice. Such impediments can be removed by initiatives aimed at rendering national legislation or other mechanisms in one country more compatible with those in others. The World Ministerial Conference could provide guidelines on how such compatibility could be achieved, and on how a thorough process of harmonization could be set in motion, with a view to improving international cooperation and eliminating safe havens for criminal groups. It could also promote cooperation among national authorities, including the exchange of information, which could prove extremely valuable in policy formulation and planning, and could design appropriate organizational procedures for such cooperation.

18. The World Ministerial Conference, in pursuing its third objective, is expected to seek more effective arrangements for international cooperation at the investigative, prosecutorial and judicial levels, based on common practice. In reviewing the principal characteristics of those arrangements, and evaluating their effectiveness, the World Ministerial Conference could consider elements that impede a prompt and effective reaction to organized transnational crime, such as lack of coordination among the agencies or departments concerned or the time-consuming procedures that are often required. This particular objective reflects the concern of the world community over the operational level of

international cooperation. There seem to be two major considerations in this regard: situations where efforts against organized transnational crime are frustrated because of obstacles diminishing the effectiveness of bilateral agreements on mutual legal assistance or extradition; and situations where bilateral arrangements do not exist or cannot be concluded. A related issue concerns those situations where existing bilateral agreements are rendered inoperative by new techniques used by organized criminal groups.

19. The detection, investigation, prosecution and adjudication of organized transnational crime are laborious and complex activities. Securing evidence often requires the cooperation of authorities from many countries. The complexity of these endeavours, coupled with the difficulties encountered when different legal systems are involved, puts enormous pressure on investigative, prosecutorial and judicial authorities. In addition, the processing of cases involving organized transnational crime is frequently delayed, or brought to a standstill, because of difficulties in communications across borders. In many cases, these problems are created because of a failure to identify an authority capable of providing assistance. In other instances, joint efforts may be hindered by the legal issues involved. The establishment of links at the operational level, and direct communication in a more informal fashion, can be invaluable in smoothing out difficulties and preventing delays or misunderstandings. Such informal arrangements and contacts should be encouraged and strengthened, provided that they do not jeopardize the fundamental rights of those involved in investigations or criminal proceedings. Regular cooperation at the operational level is also valuable in the prevention of organized transnational crime, especially in terms of the exchange of intelligence, which can be extremely useful in preventing the expansion of criminal groups across frontiers or the diversification of their activities.

20. The fourth objective of the World Ministerial Conference relates to the consideration of modalities and guidelines for the prevention and control of organized transnational crime at the regional and international levels. Bilateral agreements on mutual legal assistance and extradition are considered valuable tools in the fight against organized transnational crime. Frequently, however, their conclusion is prevented by considerations of a broader political context. This creates gaps in international cooperation that cannot be filled by other initiatives in international relations. Organized criminal groups have been known to seek out such gaps and to take full advantage of them, particularly in recent years. In some cases, bilateral arrangements are viewed as onerous agreements imposed by one of the parties on the other through pressure in other quarters. In such cases, the implementation of the agreements suffers because of the scepticism with which they are regarded and the reluctance of competent personnel to abide by their provisions. It is generally agreed that the effectiveness and efficiency of criminal justice are greatly diminished when political influence or interference comes into play. This applies even more to international cooperation in criminal justice matters.

21. Present-day realities and the growth and expansion of organized transnational crime are bound to lead to a reassessment of international cooperation in crime prevention and criminal justice, as it currently exists. The operations of organized transnational crime involve, in most cases, more than two countries. A pattern is emerging whereby organized criminal groups carry out the recruitment of personnel in one country, obtain the necessary material in another, operate in several others and direct their proceeds to still others. The confusion that such a method of operation creates among national authorities frequently makes detection impossible. In some cases, even if the principal activity is detected, obtaining and preserving evidence to effectively adjudicate the case becomes so cumbersome that offenders go unpunished. Bilateral agreements may not be able to deal adequately with activities of such complexity.

22. Issues on which the World Ministerial Conference could focus its attention include traditional principles of international cooperation, such as reciprocity, double criminality, specialty, the political

offence exception, the non-extradition of nationals, and territoriality. Giving due consideration to national concerns regarding sovereignty and independence in decision-making, the World Ministerial Conference could elaborate guidelines for the development of strategies and techniques to reduce obstacles to international cooperation. In so doing, it could consider new trends in legal theory and practice. It could also consider issues related to the expansion and improvement of international cooperation with respect to lessening the divergence of traditional conceptions of criminal justice, including substantive and procedural law and practice, with due respect for fundamental rights and freedoms. In this regard, the World Ministerial Conference could identify new areas of international cooperation, such as the recognition and enforcement of foreign judgements.

23. Offences related to the proceeds of crime deserve particular attention. Modern capabilities for transferring capital electronically have rendered the detection, investigation and adjudication of relevant offences difficult. Furthermore, since the laundering and use of the proceeds of crime are among the primary objectives of organized crime, criminal groups spare no effort to evade detection. International cooperation should be expanded to cover the tracing, seizure, confiscation and return of the proceeds of crime. The World Ministerial Conference could consider the modalities for improving international cooperation in this field and for removing obstacles created by existing perceptions and practices.

24. In order to deal with the issue of the effectiveness and efficiency of international cooperation, particularly in rapidly changing times such as these, the World Ministerial Conference could consider ways and means of building on existing modalities, thereby taking international action a step further. In this connection, it could examine ways of consolidating and integrating international efforts, using the experience accumulated throughout the world in the application of bilateral or regional cooperative arrangements.

25. One issue that appears to be central to the effectiveness of international cooperation is the capacity of national authorities to cooperate. Organized transnational crime has become considerably more sophisticated than before. This has strained the capacity of authorities in many countries, particularly developing ones, to detect, investigate and adjudicate cases involving such crime. International cooperation is adversely affected by this lack of capacity. Technical cooperation, in the form of advisory services and training aimed at improving the capacity of national authorities, is essential. Such cooperation could provide knowledge and expertise and could raise the level of professionalism of criminal justice personnel. Technical assistance is also required in reforming existing legislation or developing new legal frameworks to deal with contemporary activities of organized transnational crime and to improve or build institutions to facilitate effective international cooperation. The World Ministerial Conference could reassess existing modalities and consider new ones to improve the flow of technical assistance in this area.

26. In pursuing its fifth objective, the World Ministerial Conference is expected to consider the feasibility of elaborating international instruments, including conventions, to deal with organized transnational crime. The fundamental issues it should consider in this area would depend on the political will of Member States. The attention devoted to organized transnational crime by the Commission on Crime Prevention and Criminal Justice and the legislative bodies of the United Nations, in particular the General Assembly and the Economic and Social Council, demonstrates that the matter figures

prominently on the list of priorities of Member States.* This stems from the realization of the impact that such criminal activity has on national economies, international relations, stability, security and peace - all crucial elements to growth and development.

27. The international community is faced with new economic and social realities that create new responsibilities and place new demands on Governments throughout the world. International problems demand genuinely global approaches and action. It is said that a chain is as strong as its weakest link; in the case of organized transnational crime, the community of nations is called upon to decide whether it can afford weak links. International cooperation is more possible today than it was a few years ago. The end of the cold war has brought about a dramatic improvement in international relations, while the advancement of democracy is unprecedented. The new framework of international relations is relatively free of the impediments of the past that resulted from narrow political considerations. In this favourable environment, with the international community sharing the same values, the World Ministerial Conference could provide a forum for Member States to express all the commitment, political will and unwavering determination that are necessary to strengthen multilateral cooperation, taking global action against organized transnational crime a step further in terms of its effectiveness and productivity.

28. There is a precedent to guide the efforts of Member States in that direction. The elaboration of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (E/CONF.82/15 and Corr. 2) represented the culmination of concerted efforts by Member States to combat a form of criminal activity whose dimensions and impact were rapidly growing. The adoption of the 1988 Convention represented a major success of the international community in improving its response to the problem. It happened in an environment less conducive to mutual understanding than the one existing today; thus, it is proof of the ability of the international community to smooth out its differences when the issue at hand commands it. The World Ministerial Conference, by building on past experience and taking advantage of the existing favourable conditions, could set the stage for a similar undertaking.

II. INTERNATIONAL CONFERENCE ON LAUNDERING AND CONTROLLING PROCEEDS OF CRIME: A GLOBAL APPROACH

29. Organizational and substantive arrangements for the International Conference are at an advanced stage. The Italian Government and the International Scientific and Professional Council have finalized the annotated draft provisional agenda and have decided on the venue and dates of the International Conference. It is scheduled to be held at Courmayeur, Italy, from 17 to 21 June 1994.

30. The purpose of the International Conference is to provide a forum for the exchange of views between Governments, international organizations and individual experts on the problems presented by the proceeds of crime, and to seek ways of improving global cooperation and action to counter those problems. It is structured in such a way as to bring together policy makers and those charged with the implementation of policies and legislation to facilitate the exchange of different points of view, the discussion of specific problems and the identification of practical and effective remedies. For these

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*See General Assembly resolutions 44/71 of 8 December 1989, 45/116, 45/117, 45/118, 45/119, 45/121 and 45/123 of 14 December 1990, 46/152 of 18 December 1991, 47/87 of 16 December 1992, 48/102 and 48/103 of 20 December 1993 and Economic and Social Council resolutions 1989/62 and 1989/70 of 24 May 1989, 1992/22 and 1992/23 of 30 July 1992, and 1993/29 and 1993/30 of 27 July 1993.

reasons, participation has been sought of authorities responsible for developing policies and strategies to prevent or counter the use of the proceeds of crime and the abuse of national financial systems, including those authorities responsible for the day-to-day implementation and supervision of activities in the banking and financial service sector.

31. The International Conference will begin by reviewing international trends in money-laundering and in the use of the proceeds of crime. It will consider a study on the subject prepared with the support of the European Institute on Crime Prevention and Control, affiliated with the United Nations. In addition, input will be provided by the regional institutes cooperating with the United Nations in the field of crime prevention and criminal justice; thus, the participants will be aware of the regional perspectives and the specific problems faced in the various regions. The International Conference will then discuss the problems that the laundering and use of the proceeds of crime create for the economies of countries in various stages of development. It will also examine the concerns of developing countries and those in transition regarding their efforts to foster economic growth and to implement economic reforms aimed at structuring their economies in accordance with free-market principles. Related issues to be considered include policies for the attraction of foreign capital by countries in various stages of development, tax-haven policies for the attraction of capital, bank secrecy in developing countries and privatization. In addition, international financial institutions are expected to provide input relating to their experience and efforts to promote development.

32. The International Conference will deal with mechanisms of international control, such as the recommendations of the Financial Action Task Force established by the heads of State or Government of the Group of Seven major industrialized countries and the President of CEC and their implementation, as well as other multilateral and regional arrangements. The International Conference will also assess prevention and control policies, including regulatory and crime control measures. Under regulatory policies, it will discuss issues such as mandatory regulation and self-regulation of financial institutions, the movement of capital to non-regulated sectors, the transparency of financial institutions and the infiltration of legitimate business enterprises by the proceeds of crime. In discussing crime control policies, the International Conference is expected to consider issues such as making it a criminal offence to carry out transactions involving the proceeds of crime; the detection, investigation and adjudication of offences involving the proceeds of crime (including asset-tracing, seizure, forfeiture and return); the protection of individual and property rights in cases involving the proceeds of crime; making currency control violations, and the failure to report such violations, a criminal offence, and the implications of such a measure for financial institutions and the business community; the effectiveness of legislation and the need for compatibility to facilitate international cooperation; and professional responsibility, particularly with reference to professions that carry privileges of confidentiality. The International Conference will also explore the needs of Member States with respect to technical cooperation in the field of prevention and control of the laundering and use of the proceeds of crime; and modalities for the provision of knowledge and expertise to Member States upon request. In addition, the International Conference will examine the role that the United Nations system can play in providing or facilitating technical assistance and mutual cooperation in that field.

III. OTHER RELATED MATTERS

33. Treaties on mutual legal assistance, extradition and transfer of proceedings continue to be the primary means of international cooperation in crime prevention and criminal justice. As implementation of such arrangements may often be hindered by the lack of national legislation intended for that purpose, a meeting of the Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties was held at Vienna from 18 to 21 October 1993 to discuss current experiences and propose

viable solutions. The report on the meeting of the Expert Group, contained in an addendum to the present report (E/CN.15/1994/4/Add.1, annex), will be before the Commission for its consideration.

34. In its resolution 1992/22, section VI, the Economic and Social Council determined that one of the priority themes to guide the work of the Commission and that of the United Nations crime prevention and criminal justice programme should include the role of criminal law in the protection of the environment. The issue has attracted considerable attention in various forums, as awareness of issues related to the protection of the environment has increased. In an effort to give effect to the recommendations of the Commission and to contribute to a better understanding of the issues involved, the Crime Prevention and Criminal Justice Branch convened at Vienna, from 7 to 10 December 1993, a meeting of the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime. The report on the meeting of that Expert Group is contained in an addendum to the present report (E/CN.15/1994/4/Add.2, annex), for consideration by the Commission.

35. One issue closely associated with effective action against organized transnational crime is violence directed at criminal justice officials. Such individuals often become targets of organized criminal groups, particularly when investigations are close to reaching a successful conclusion. An ad hoc expert group meeting was hosted by the Office of International Criminal Justice of the University of Illinois at Chicago to discuss protection of criminal justice officials against violence and intimidation, as well as measures to counter violence associated with the operations of organized transnational crime. The meeting of the Ad Hoc Expert Group on Managing the Risk of Violence in a Criminal Justice System: a Framework of Analysis was held at Chicago from 18 to 20 August 1993. The conclusions and recommendations of that Expert Group are contained in an addendum to the present report (E/CN.15/1994/4/Add.3, annex), for the consideration of the Commission.

IV. CONCLUSIONS

36. In the Commission, the Economic and Social Council and the General Assembly, the interest and support displayed by Member States in fighting organized crime augur well for the success of the World Ministerial Conference, reflecting the realization that organized transnational crime is a problem requiring increased international attention and global action. If that interest and support can be translated into political commitment at a high level, the World Ministerial Conference may mark the beginning of a concerted effort conducive to tangible and practical results. Such commitment would convey the message that the international community will not spare any effort to safeguard its fundamental values and to guarantee global security, peace and development.

37. The Commission may wish to emphasize the value of the World Ministerial Conference and call the attention of all Member States to its objectives and expected results, urging them to be represented at that Conference at the highest possible level. The Commission may also wish to review the preparations for the World Ministerial Conference, to offer its guidance with respect to any pending organizational and substantive matters and to provide directions for its documentation, as well as modalities for the finalization of those preparations, including the documentation.

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Item 3 of the provisional agenda*

REVIEW OF PRIORITY THEMES, IN ACCORDANCE WITH COMMISSION RESOLUTION 1/1 ON STRATEGIC MANAGEMENT BY THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE OF THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME

Status of the preparations for the World Ministerial Conference on Organized Transnational Crime

Report of the Secretary-General

Addendum

Report on the meeting of the Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties, held at Vienna from 18 to 21 October 1993

The Secretary-General has the honour to submit to the Commission on Crime Prevention and Criminal Justice the report on the meeting of the Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties, held at Vienna from 18 to 21 October 1993 (see annex).

*E/CN.15/1994/1.

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Annex

REPORT ON THE MEETING OF THE AD HOC EXPERT GROUP ON IMPLEMENTING LEGISLATION TO FOSTER RELIANCE ON MODEL TREATIES, HELD AT VIENNA FROM 18 TO 21 OCTOBER 1993

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RECOMMENDATIONS

The Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties recommended to the Commission on Crime Prevention and Criminal Justice, at its third session, consideration of the following draft resolution:

The Commission on Crime Prevention and Criminal Justice,

Bearing in mind the Milan Plan of Action[1] adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order,[2] principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress,[3] on organized crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

Recalling the Model Treaty on Extradition, the Model Treaty on Mutual Assistance in Criminal Matters and the Model Treaty on the Transfer of Proceedings in Criminal Matters adopted, on the recommendation of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by the General Assembly in its resolutions 45/116, 45/117 and 45/118 of 14 December 1990, respectively, in which the Assembly, inter alia, urged Member States to strengthen international cooperation in criminal justice and invited them to take into account the model treaties when establishing or revising treaty relations with other States in such matters,

Recalling Economic and Social Council resolution 1992/23 of 30 July 1992, in which the Council requested the Secretary-General to continue the analysis of information on, inter alia, legislative measures and the promotion of international cooperation aimed at controlling organized crime,

Recalling also the recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice, former Czechoslovakia, in 1991, which the Economic and Social Council, in its resolution 1992/23, noted and offered for the consideration of Governments, and which included the recommendation that national and international efforts to achieve more effective strategies to deal with transnational crime should focus on, inter alia, cooperation through extradition, mutual assistance, including the designation of an appropriate coordinating authority to expedite the implementation of treaties,

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[1] Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

[2] Ibid., sect. B.

[3] Ibid., sect. E.

1. Invites Member States to consider the following measures in the context of the use and application of the model treaties:

(a) Establishing a designated central authority to process requests for mutual assistance in criminal matters and extradition;

(b) Undertaking periodic reviews of their treaty relations and implementing legislation, with reference to the relevant model treaty;

(c) Clarifying, where appropriate, the roles of departments of State and foreign ministries having a diplomatic and policy function, on the one hand, with those having a technical legal and/or law enforcement role on the other;

(d) Enacting streamlined national legislation giving effect to treaties on international cooperation in criminal matters;

(e) Simplifying and streamlining procedures necessary to execute and initiate requests for assistance, including the provision of information to requested States sufficient to identify the material which is the subject of the assistance sought, particularly where the exercise of compulsory powers is required;

(f) In respect of extradition:

(i) Providing for extradition based upon a level of documentation which is sufficient to establish the need for trial where a person is accused of an offence;

(ii) Providing for extraditable offences to extend to all acts and omissions which would be a criminal offence in both States carrying a prescribed minimum penalty, and not to be individually listed in treaties;

2. Requests the Secretary-General to take appropriate steps to ensure that the crime prevention and criminal justice programme is adequately strengthened and provided with additional resources, if necessary by means of extrabudgetary funds by donor States or organizations, to enable the programme to respond effectively to requests for technical assistance by Member States in the areas covered by the model treaties;

3. Requests the Secretary-General:

(a) To develop training materials, as soon as possible, in cooperation with experts and Member States, for use in providing technical training to requesting Member States on the model treaties, especially those relating to mutual assistance in criminal matters, extradition and the transfer of criminal proceedings, including in particular:

(i) Manuals providing guidance concerning those model treaties;

(ii) General guidelines for national legislation to implement those model treaties;

(b) To continue to provide advisory and technical cooperation services to Member States requesting assistance concerning the use and application of those model treaties as required, especially practical assistance with drafting implementing legislation;

(c) To prepare and distribute to Member States a list of central authorities designated by countries to deal with requests for mutual assistance in criminal matters and extradition, before the end of 1994;

(d) To coordinate periodic meetings of central authorities of Member States dealing with requests for mutual assistance in criminal matters and extradition from Member States or to promote such meetings on a regional basis for Member States wishing to attend;

(e) To provide training to central authorities of requesting Member States dealing with mutual assistance in criminal matters and extradition requests;

(f) To develop a roster of experts who could be consulted on the subjects dealt with by the model treaties;

(g) To coordinate requests for office equipment required by central authorities to implement relevant treaties, with resources made available by donor Member States and organizations for that purpose;

(h) To make available to Member States information on national legislation and practices relating to international cooperation in criminal matters;

(i) To provide new or additional resources, where appropriate, to enable the United Nations crime prevention and criminal justice programme to fulfil these tasks.

I. BACKGROUND

1. The meeting of the Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties was held at Vienna from 18 to 21 October 1993. The Meeting was convened with a view to encouraging Member States to give greater attention to the promulgation and implementation of appropriate laws to counter transnational crime.

2. On the recommendation of the Eighth United Congress on the Prevention of Crime and the Treatment of Offenders, the General Assembly, in its resolutions 45/116, 45/117 and 45/118, adopted three model treaties on international cooperation in criminal justice matters. In adopting the model treaties, the Assembly, inter alia, invited Member States, if they had not already established treaty relations with other States, or if they wished to revise existing treaty relations, to take the model treaties into account. Member States were also urged to strengthen international cooperation in criminal justice, and to inform the Secretary-General periodically of efforts undertaken to establish treaty arrangements. Finally, Member States were invited to make available to the Secretary-General the provisions of their treaty legislation to assist those Member States desiring to enact or further develop legislation in the fields concerned.

3. The Economic and Social Council, in its resolution 1992/23, also requested the Secretary-General to continue the analysis of information on legislative measures and the promotion of international cooperation aimed at controlling organized crime.

4. The model treaties and other instruments considered by the Expert Group were as follows:

(a) Model Treaty on Extradition, adopted by the General Assembly in resolution 45/116;

(b) Model Treaty on Mutual Assistance in Criminal Matters, adopted by the General Assembly in its resolution 45/117;

(c) Model Treaty on the Transfer of Proceedings in Criminal Matters, adopted by the General Assembly in its resolution 45/118;

(d) Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, adopted by the General Assembly in resolution 45/119;

(e) Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, adopted by the Eighth Congress;[1]

(f) Model Agreement on the Transfer of Foreign Prisoners, adopted by the Seventh Congress as noted by the General Assembly in its resolution 40/146;

(g) Draft Model Treaty on the Transfer of Enforcement of Penal Sanctions, elaborated by an expert group at Siracusa, Italy, from 3 to 8 December 1991 (E/CN.15/1992/4/Add.3 and Corr.1, annex I) and cited with approval in the report of the Commission on Crime Prevention and Criminal Justice on its first session (E/1992/30, paras. 66-67);

(h) Model Decree for the Confiscation of Criminal Proceeds (E/CN.15/1992/4/Add.1, annex II, elaborated by the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice, former Czechoslovakia, from 27 to 31 May 1991.

The meeting focused primarily on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters.

5. The particular objectives of the meeting in respect of the model treaties were as follows:

(a) To examine national and international experiences concerning the use and application of the model treaties;

(b) To identify legal and operational problems which may impede effective use of the model treaties;

(c) To consider possible steps towards improving the compatibility of national legislation in order to improve international cooperation in the areas addressed by the model treaties;

(d) To identify practical options and strategies for overcoming procedural problems in reliance on model treaties;

(e) To consider technical cooperation activities, including training, advisory services and publications which might be provided to requesting Member States.

6. Further to these objectives, the attention of the participants was drawn to the following possible areas of difficulty, with a view to making recommendations as appropriate:

(a) Any difficulties on the part of national policy makers and legislators in appreciating the possible role of the model treaties;

(b) Any shortcomings in national legislation applying to the model treaties;

(c) Possible problems with the resources available to competent national authorities;

(d) Procedural and substantive constraints in requested States, limiting their ability to fully execute requests made pursuant to bilateral arrangements based on the model treaties;

(e) Any difficulties relating to the form and content of requests;

(f) Any lack of clear procedures to govern the daily relations between national authorities.

7. The meeting was attended by experts from nine countries and by observers from the United Nations International Drug Control Programme (UNDCP) and from two intergovernmental organizations. To assist with the deliberations of the meeting, the Secretariat provided a background paper on the model treaties, and experts presented country papers containing an overview of the relevant applicable laws in their countries, as well as any difficulties and issues concerning the implementation of the model treaties. A list of participants is contained in the appendix to the present report.

8. Hassan Jallow, Attorney-General and Minister of Justice of the Gambia, chaired the meeting; and B. Bannerman, of the Attorney-General's Department in Australia, served as Rapporteur.

II. SUMMARY OF THE DISCUSSION

9. All participants agreed on the importance of strengthening international cooperation in the face of growing transnational crime. Experts considered that the model treaties were very useful tools to assist Member States in combating crime at the national, regional and international level. A number of participants said that their Governments had referred to the model treaties when negotiating bilateral arrangements. Others reported that while their Governments had not directly utilized the model treaties, they were aware that the approaches taken were consistent with the models.

10. It was agreed that the model treaties needed to be supported by legislation at a national level to be effective. A number of participants advised that their countries did not have legislation dealing specifically with the subject matter of the model treaties, and that requests for assistance were dealt with through diplomatic channels, which could lead to delays in executing requests or the unavailability of assistance. It was considered that national legislation should be as streamlined as possible, both as to substantive law and procedural matters. That was necessary in order to achieve maximum efficiency with limited national resources. The importance of simplified laws and procedures was emphasized, since undue complexity tended to lead to delays and problems in executing requests.

11. The participants discussed the possibility of preparing model legislation for reference by Member States wishing to implement the model treaties. Some participants considered that that would be helpful for Member States that did not have the necessary legislation. However, other participants were of the view that the legal, social and political differences between different countries were too great for that to be practical, and that suggestions as to implementation measures would be more useful if included in training material.

12. In order to assist requesting Member States with that, it was agreed that the United Nations should prepare general guidelines for implementing legislation, which would identify those matters the requested State needed to be able to fulfil under its domestic law. It was suggested that such guidelines should contain examples of implementing legislation which were representative of different legal systems. A number of participants advised that they would be prepared to assist in that work by providing information and expertise.

13. The Expert Group was pleased to note that, at the request of and in cooperation with the Crime Prevention and Criminal Justice Branch, the Canadian Government had produced a draft manual on the Model Treaty on Mutual Assistance in Criminal Matters, which was distributed for comments from participants. A final draft would be prepared within two months of the date of the receipt of all comments. That draft would also include a model request for assistance.

14. In addition, it was announced that the Government of Australia had made a commitment to prepare a similar draft manual on the Model Treaty on Extradition. The experts of Mexico and of the United States of America stated that they would cooperate in preparing a draft manual on the Model Treaty on the Transfer of Proceedings in Criminal Matters. It was considered that such initiatives were very positive steps towards the practical use and application of the model treaties.

15. Participants agreed that the Branch should be enabled to provide to Member States assistance in the preparation of national legislation upon request.

16. A number of experts raised the issue of difficulties arising in the execution of requests, due to defects in the form and content of requests. It was considered that a standard form of request could assist Member States with the speedy execution of requests. It was agreed that a standard request form should be included in the manual on the Treaty on Mutual Legal Assistance in Criminal Matters for the consideration of interested Member States. It was also emphasized that the provisions of treaties should be kept up to date, especially in the light of new technology and other means, including modes of transportation available to criminals.

17. Some experts also suggested that the United Nations should develop new model treaties, especially in the areas of organized crime, money-laundering and corruption. In that context, one participant suggested that the Commission on Crime Prevention and Criminal Justice should establish a special working group on the model treaties and other such instruments to prepare proposals based on the analysis of the legislation and experiences of Member States. Other options discussed included the elaboration of model intergovernmental agreements for direct cooperation between law enforcement agencies, dealing with areas such as terrorism. However, most participants were of the view that it would be better to focus on improving the use and application of existing instruments, in accordance with the priorities of the Commission.

18. The importance of close cooperation between responsible officials at national levels was strongly emphasized. Several experts suggested that meetings of such officials should be arranged periodically, through the offices of the United Nations, subject to the provision of adequate resources by Member States. It was considered that such meetings would make a very valuable contribution to improving international cooperation through exchanges of information as well as informal discussions. Some participants considered that such meetings could be held on a regional basis. Further consideration of funding for such meetings would be necessary, to ensure participation of developing countries.

19. It was agreed that training should focus primarily on the central authorities of States requesting assistance. Such training could be provided by the United Nations, on a bilateral basis by other States or by intergovernmental organizations. It was envisaged that such central authorities could in turn provide training to law enforcement officials and other government officials. It was suggested that the United Nations should also, where possible and appropriate, keep members of the judiciary advised about developments in the area of international cooperation in criminal matters. It was agreed that the proposed manuals on model treaties, as well as guidelines for national legislation, would provide useful material for training. They could also be made available to Member States seeking more information on the model treaties but not requesting training or advisory services.

20. It was noted that the different legal traditions of Member States could create difficulties with international cooperation, especially in respect of the admissibility of evidence. It was also noted that difficulties had been encountered in respect of the official recognition of the source of requests. It was considered that the Crime Prevention and Criminal Justice Branch could assist through its clearing-house function by making information available to Member States. In particular, it was thought that the Branch should circulate a list of central national authorities competent to deal with requests for mutual legal assistance and extradition. It was agreed that appropriate national measures should be put in place to ensure the admissibility of evidence obtained pursuant to requests for mutual assistance in criminal matters.

21. In that respect it was considered that greater appreciation of other legal systems was desirable, especially the difference between civil law and common law jurisdictions. Where possible, national legislation should be prepared to facilitate better coordination and cooperation between Member States.

22. There was some discussion of individual areas of difficulty in the application of the model treaties. Concern was expressed about the detrimental effects which undue banking secrecy could have on international cooperation, particularly relating to the proceeds of crime. Further discussion might be necessary in other forums before general agreement could be reached between Member States concerning the desirability of entering into treaties on mutual assistance in criminal matters which would include obtaining bank records under compulsory processes. Difficulties relating to the confiscation of property involved in crime and jurisdictional problems involving the law of the sea were also discussed.

23. A number of experts raised the issue of the political offence exception as a ground for refusing requests, and were concerned that that ground should not impair the ability of requested States to provide assistance in relation to common crimes. Some participants questioned whether it should be a ground for refusing requests. It was considered by many participants that the political offence exception should not be used to prevent the provision of assistance in respect of crimes of terrorism, although it was noted that there were problems of definition in those areas.

24. A number of experts discussed the possibility of using the transfer of proceedings as an alternative where extradition was not possible. Experts also recognized the desirability of transfer-of-prisoner schemes subject to appropriate provision being made for payment of costs associated with the transfer. Some experts suggested that prisoners, or their families, making a request for transfer should be liable for the related costs incurred.

25. The importance of strengthening the resources of the Crime Prevention and Criminal Justice Branch was emphasized in the context of the United Nations role in promoting international cooperation by undertaking a number of activities, which were included in the recommendations of the Expert Group.

26. While it was suggested that accelerating the adoption of an international penal code could facilitate international cooperation, it was also observed that holding United Nations congresses on the prevention of crime and the treatment of offenders every three years instead of five would intensify international contacts and thus contribute to more effective collaborative arrangements.

Note

[1]Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.20), chap. I, sect. B.1.

Appendix

LIST OF PARTICIPANTS

Experts

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Jianping Cao, Bureau of International Judicial Assistance, Ministry of Justice, China

W. H. Corbett, Senior General Counsel, International Assistance Group, Department of Justice, Canada

Cenk Alp Durak, Deputy Director-General for Penal Affairs, Ministry of Justice, Turkey

John Harris, Deputy Director, Office of International Affairs, Criminal Division, Department of Justice, United States of America

Guillermo Alejandro Hernandez-Salmeron, Advisor to the General Coordinator of Human Rights and Drug Trafficking, Ministry of Foreign Affairs, Mexico

Hassan Jallow, Attorney General and Minister of Justice, Ministry of Justice, the Gambia

Wafik Zaher, Deputy Director, Legal Department, Ministry of Foreign Affairs, Egypt

A. V. Zmeevski, Deputy Director, Legal Department, Ministry of Foreign Affairs, Russian Federation

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Tomas Larios Palacios, Director of International Judicial Assistance, General Department of Legal, International Affairs, Attorney General's Office, Mexico

United Nations Secretariat

United Nations International Drug Control Programme

Intergovernmental organizations

Asian-African Legal Consultative Committee

Commonwealth Secretariat

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Status of preparations for the World Ministerial Conference on Organized Transnational Crime

Report of the Secretary-General

Addendum

Report on the meeting of the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held at Vienna, from 7 to 10 December 1993

The Secretary-General has the honour to submit to the Commission on Crime Prevention and Criminal Justice the report on the meeting of the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held at Vienna from 7 to 10 December 1993 (see annex).

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Annex

REPORT ON THE MEETING OF THE AD HOC EXPERT GROUP ON MORE EFFECTIVE FORMS OF INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL CRIME, INCLUDING ENVIRONMENTAL CRIME, HELD AT VIENNA FROM 7 TO 10 DECEMBER 1993

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RECOMMENDATIONS

The Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, recommended the following draft resolution for consideration by the Commission on Crime Prevention and Criminal Justice at its third session:

The Commission on Crime Prevention and Criminal Justice,

Recalling General Assembly resolution 45/121 of 14 December 1990, on the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which the Assembly welcomed the instruments and resolutions adopted by the Eighth Congress, including the resolution on the role of criminal law in the protection of nature and the environment,[1]

Recalling also General Assembly resolution 46/152 of 18 December 1991, in which the Assembly called for the strengthening of regional and international cooperation in combating transnational crime,

Recalling Economic and Social Council resolution 1993/28 of 27 July 1993, on the role of the criminal law in the protection of the environment, in which the Council took note of the conclusions, contained in the annex to that resolution, of the Seminar on the Policy of Criminal Law in the Protection of Nature and the Environment in a European Perspective, held at Lauchhammer, Germany, from 25 to 29 April 1992,

Recalling also Economic and Social Council resolution 1993/32 of 27 July 1993, on preparations for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which the Council approved the provisional agenda for the Ninth Congress, including an item entitled "Action against national and transnational economic and organized crime, and the role of criminal law in the protection of the environment: national experiences and international cooperation", and endorsed the programme of work for the Ninth Congress, including the holding of six workshops, one of them on the topic "Environmental protection at the national and international levels: potentials and limits of criminal justice",

Recalling the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, in which the World Conference recognized, inter alia, that illicit dumping of toxic and dangerous substances and wastes potentially constituted a serious threat to the human rights to life and health of everyone,[2]

Noting with appreciation the work on the topic "Environmental protection at the national and international levels: potentials and limits of criminal justice" being undertaken by the United Nations Interregional Crime and Justice Research Institute, in view of the workshop on the same topic to be held at the Ninth Congress,

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[1] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.2.

[2] A/CONF.157/23, sect. I, para. 11.

Noting the report of the International Law Commission on the work of its forty-third session, in particular the draft Code of Crimes against the Peace and Security of Mankind, article 26, on wilful and severe damage to the environment;[3] and the draft articles on state responsibility, in particular article 19, on international crimes and international delicts,[4]

Noting the recommendation of the colloquium of the International Association of Penal Law held at Ottawa, Canada, in November 1992, to be considered for adoption by the fifteenth International Congress on Penal Law, to be held at Rio de Janeiro, Brazil, in 1994,

Convinced that the environmental situation in developed, as well as developing, countries is the cause of increasingly serious concern about damage to the environment and its constituent elements, including water, soil, air, atmosphere, and the living species, including plants, animals and humans, and that it requires comprehensive and integrated approaches to the use of countermeasures at the national, regional and international levels,

Recommends that Member States should consider adopting the following measures concerning the role of criminal law in protecting the environment:

(a) Specific environmental legislation should be further developed on the basis of generally recognized principles, such as the "polluter pays" principle described in principle 16 and the "precautionary principle" described in principle 15 of the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development,[5] giving due and balanced consideration to the need to protect the environment in other parts of the law, and in the context of improving political and social conditions for a responsible environmental policy;

(b) National and supranational authorities should be provided with a wide array of measures, remedies and sanctions, within their constitutional and legal frameworks and consistent with the fundamental principles of criminal law, in order to ensure compliance with environmental protection laws. They should include regulatory and licensing powers, incentives, administrative enforcement mechanisms, and punitive administrative, civil and criminal sanctions for impairing or endangering the environment. They should also include provisions for the forfeiture of profits and proceeds of crime, and of property used or employed in the commission of crime, such as vessels, vehicles, tools, equipment and buildings;

(c) Environmental criminal law should be aimed at promoting all the important components of the environment, including human beings and other living species. It should be directed, in particular, to the regulation, control and, where necessary, the complete prohibition of hazardous activities, including the establishment and operation of hazardous installations, and the illegal import, export, movement and disposal of hazardous materials and wastes;

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[3]See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10), paras. 60-176.

[4]Ibid., paras. 302-322.

[5]Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex I.

(d) Substantive environmental criminal law should formulate at least certain core criminal offences. These core offences, which could be autonomous and independent of environmental regulatory laws, should include deliberate, reckless or negligent assaults on the environment that cause or create imminent risks of serious damage, harm or injury. In addition, criminal sanctions should be extended to deliberate, reckless or negligent violations of administrative rules where there is a likelihood of serious harm or danger to the environment. In developing such criminal offences, the field guide contained in the annex to the report by the United Nations Interregional Crime and Justice Research Institute and the Australian Institute of Criminology entitled Environmental Crime, Sanctioning Strategies and Sustainable Development[6] should be taken into consideration;

(e) Subject to relevant international conventions, States should seriously consider enacting legislation prohibiting and sanctioning the export of products that have been banned from domestic use because of their deleterious impact on the environment and human health. Furthermore, Governments might consider the idea of banning the production and import of specific dangerous materials unless sufficient precautionary measures can be taken in respect of their use, treatment or disposal in their countries;

(f) Environmental crimes should cover intentional as well as reckless acts. When serious harm or actual danger of harm has been caused or created, however, negligent conduct should also be a crime if the persons responsible have significantly departed from the care and skill expected of them in the pursuit of their activities. In relatively minor cases, the imposition of fines, including administratively or judicially imposed non-criminal fines, and other non-custodial alternatives should be sufficient;

(g) Support should be given to the extension of the idea of imposing criminal or non-criminal fines or other measures on corporations in jurisdictions in which corporate criminal liability is not currently recognized in the legal systems;

(h) When using criminal law in environmental protection and creating new environmental crimes, consideration should be given to the need for law enforcement resources. Cooperation and coordination between criminal justice agencies and administrative agencies should be promoted, especially in jurisdictions where prosecutions are undertaken by criminal justice agencies. Furthermore, the judiciary should be sensitized to the seriousness of environmental offences and their consequences. Adequate staffing, special training and equipment should be provided to criminal justice agencies;

(i) In designing environmental law enforcement strategies, the legislator should consider in the framework of the constitution and the basic principles of the legal system, the rights of identifiable victims, victim assistance, facilitation of redress and monetary compensation, by removing legal barriers such as standing to sue, participation in proceedings and actions by citizens, including class action suits and citizen suits;

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[6]UNICRI 49.

(j) In accordance with the various provisions of Agenda 21,[7] adopted by the United Nations Conference on Environment and Development, such as those contained in chapters 8, 38, 39 of Agenda 21, collaboration with non-governmental organizations in efforts aimed at the prevention of environmental crimes and the effective redress of damage to health and the environment should be encouraged. Examples of such efforts are the ombudsman-like functions and alternative methods for resolving disputes currently being developed by the Earth Council, a non-governmental organization referred to in chapter 38 of Agenda 21;

(k) On the basis of proposals put forward by the International Law Commission and the discussions at the United Nations Conference on Environment and Development, Member States should consider acknowledging the most serious forms of environmental crimes in an international convention;

(l) States should be encouraged to contribute to the codification work of the International Law Commission, in particular in further refining the concept of international crimes and delicts in article 19 of the draft articles on state responsibility[4] and the concept of environmental crimes in article 26 of the draft Code of Crimes against the Peace and Security of Mankind;[3]

(m) Environmental offences should be framed in such a manner as to cover transboundary and transnational situations. On the one hand, the principle of ubiquity should be taken into consideration in the application of the principle of territoriality. On the other hand, the possibilities of prosecution of crimes of an extraterritorial nature might be extended by applying the principle of nationality, the principle of "extradite or prosecute" or, for example in cases of generally acknowledged international crimes, even the principle of universality;

(n) The use of legal instruments of international cooperation, such as those on extradition, mutual legal assistance and/or transfer of proceedings, should be supported and expanded. Environmental crimes of particular gravity or importance should become extraditable offences;

(o) In order to facilitate the prosecution of international crimes, in particular environmental crimes, States should consider the viability of establishing an international criminal court. Regional initiatives for the establishment of an international court for the prosecution of environmental crimes should be welcomed;

(p) States should consider, at least at the regional level, a minimum harmonization of environmental offences as a basis for international cooperation. In this respect, efforts to promote such harmonization, such as those of the Council of Europe and the Central American States, should be supported;

(q) International cooperation in the enforcement of environmental laws should be fostered by the provision of technical assistance bilaterally, multilaterally and through relevant international agencies, such as the Commission on Crime Prevention and Criminal Justice, the network of institutes of the United Nations crime prevention and criminal justice programme,

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[7] Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex II.

and similar regional institutes. Further research in this area, including the nature and extent of polluting activities, sanctioning strategies and the appropriate mix of measures in particular situations, should be encouraged.

I. BACKGROUND

1. The meeting of the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, was held at Vienna from 7 to 10 December 1993. The meeting was attended by 17 experts nominated by the Governments of 14 countries selected on the basis of equitable geographical distribution, 2 expert observers and observers for 1 United Nations institute, 2 institutes affiliated with the United Nations and 1 non-governmental organization. The list of participants is contained in the appendix to the present report.

2. The meeting had before it the following documents:

(a) An annotated provisional agenda;

(b) Economic and Social Council resolution 1993/28, on the role of the criminal law in the protection of the environment, including the conclusions of the Seminar on the Policy of Criminal Law in the Protection of Nature and the Environment in a European Perspective, held at Lauchhammer, Germany, from 25 to 29 April 1992;

(c) A report entitled "Rounding up themes and issues", prepared by the United Nations Interregional Crime and Justice Research Institute and the Australian Institute of Criminology.

3. Benjamin P. Kubo, Solicitor-General of Kenya, chaired the meeting, and Mohan Prabhu, Senior Counsel in the Department of Justice of Canada, served as Rapporteur.

4. The General Assembly, in its resolution 45/121 of 14 December 1990, on the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, welcomed the instruments and resolutions adopted by the Eighth Congress,[1] including the resolution on the role of criminal law in the protection of nature and the environment.

5. The General Assembly, in its resolution 46/152, annex, of 18 December 1991, called for strengthening regional and international cooperation in combating transnational crime.

6. The Economic and Social Council, on the recommendation of the Commission on Crime Prevention and Criminal Justice, adopted resolution 1992/22 of 30 July 1992. In section VI of that resolution, the Council determined that one of the priority themes to guide the work of the Commission in the period 1992-1996 should be national and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment.

7. The Economic and Social Council, on the recommendation of the Commission, adopted resolution 1993/28 of 27 July 1993, on the role of criminal law and the protection of the environment. In that resolution, the Council requested the Secretary-General to consider the possibility of undertaking activities in the field of environmental crime in the United Nations crime prevention and criminal justice programme, in particular to include environmental crime as an issue for technical cooperation, and for that purpose, to establish, with input from Member States, a roster of experts from all regions in the field of environmental crime. It also called upon Member States and the bodies concerned to continue their efforts to protect nature and the environment using, in addition to measures provided by

administrative law and liability under civil law, measures in the field of national criminal law, and to provide requesting Member States with technical cooperation in the field of prevention and control of environmental crime.

8. The Economic and Social Council, on the recommendation of the Commission, adopted resolution 1993/32 of 27 July 1993. In that resolution, the Council approved the provisional agenda for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, including an item entitled "Action against national and transnational economic and organized crime, and the role of criminal law in the protection of the environment: national experiences and international cooperation". Also in that resolution, the Council endorsed the programme of work for the Ninth Congress, including the holding of six workshops, one of them on the topic "Environmental protection at the national and international levels: potentials and limits of criminal justice". In Economic and Social Council resolution 1993/243 of 27 July 1993, adopted on the recommendation of the Commission, the Council approved the provisional agenda for the third session of the Commission, including under item 3 the role of criminal law in the protection of the environment.

9. The United Nations Conference on Environment and Development, held at Rio de Janeiro, Brazil, from 3 to 14 June 1992, adopted Agenda 21, in which it stressed the importance of enforceable, effective laws. It stated that such laws, regulations and standards should be based on sound economic, social and environmental principles and appropriate risk assessment, incorporating sanctions designed to punish violations, obtain redress and deter future violations.[2]

II. OBJECTIVES OF THE MEETING

10. The objectives of the meeting were to produce recommendations for presentation to Member States, through the Commission on Crime Prevention and Criminal Justice and the Ninth Congress. In particular, the participants considered the following topics:

(a) Elements constituting an environmental crime that would be internationally recognized as such;

(b) Forms of environmental crime with a transnational character;

(c) Methods of international cooperation currently used to counter transnational environmental crime, and improvements that could be recommended to make international cooperation more effective;

(d) Approaches to furthering cooperation between jurisdictions with different legal models, including the execution of sanctions;

(e) Obstacles to the application and use of criminal law in protecting the environment, and approaches to overcoming them;

(f) Incorporation of environmental crime prevention into technical cooperation activities, and means by which that could be achieved.

11. With reference to Economic and Social Council resolution 1993/28, concerning the establishment of a roster of experts on environmental crime, the experts participating in the meeting were invited to provide the necessary details so that their names could be included on such a roster and to advise the Secretariat of the names and addresses of other national experts.

III. COUNTRY REPORTS

12. Experts from all participating countries and observers for the United Nations Interregional Crime and Justice Research Institute, the European Institute for Crime Prevention and Control, affiliated with the United Nations, and the International Centre for Criminal Law Reform and Criminal Justice Policy made presentations on relevant legislation and approaches to the role of criminal law in protecting the environment. A summary of those presentations is available from the Crime Prevention and Criminal Justice Branch upon request; it is hoped that, in view of their value, they could be presented in a publication.

13. Crime has no ideological boundaries, nor does it respect territorial boundaries or the state of development in particular jurisdictions. All participants identified environmental protection as an increasingly important area of concern for their countries. Environmental degradation was linked with a number of causes, including industrialization, deforestation, population growth, overcultivation and poverty, as well as intentionally or recklessly committed crimes, and acts of negligence.

14. A number of issues were of common concern to most participants. Many experts said that in their countries there were provisions relating to the environment scattered throughout a number of laws and regulations and administered by a number of authorities. It was noted that that tended to undermine the effectiveness of the laws and their enforcement. In some countries, the consolidation and rationalization of environmental protection legislation were taking place or being considered.

15. Enforcement presented a special problem since it often lacked coordination and resources and was not always a high priority. A number of measures were recommended to better coordinate enforcement action. Examples included the establishment of a designated prosecutor or prosecution department for all environmental offences, special police units and, in some cases, specialized courts to hear environmental cases. In countries composed of a number of states, it was also necessary to coordinate federal and state-based measures. Other ways to improve enforcement that were referred to included: the joint training of personnel; coordinated research and dissemination of findings; evaluation of enforcement programmes; collation of data; and improved liaison between relevant national, regional and interregional agencies.

16. It was noted that, in countries that had already introduced penal provisions into their environmental protection legislation, prosecutions had been steadily increasing in recent years. The importance of educating the public was emphasized, as it raised awareness and ensured comprehension of legal requirements.

17. There was considerable discussion concerning the respective roles of criminal, civil and administrative law in environmental protection. In many cases criminal law was used to reinforce compliance with administrative law, while in other cases there were independent criminal offences. A number of countries did not have any criminal sanctions for environmental offences.

18. The illegal importation and transit of hazardous waste were described as posing a particular problem for developing countries or countries in transition, in the absence of comprehensive enforcement or regulatory mechanisms, or information systems to monitor the waste. In some cases dangerous waste products were being imported under the guise of legitimate chemical imports, although they did not have clearance from the proper authorities. Efforts were being made to bring that situation under control by introducing more comprehensive legislation to regulate importation and by introducing sanctions for non-compliance. One expert said that his country would benefit from studying the legislation and enforcement mechanisms of other countries in that respect. The sale of low-level nuclear waste was noted as a problem in some countries, also in connection with transnational organized crime. In one country,

work was under way to counter the illegal disposal of hazardous waste by rigorous controls on the export of such waste by its nationals.

19. A number of countries were experiencing increasing difficulties with transnational crime, particularly drug trafficking and money-laundering. In many cases there appeared to be links between organized crime, economic crime and environmental offences. The importance of international cooperation in countering transnational crime, including crime against the environment, was highlighted; special emphasis was placed on extradition and mutual legal assistance in criminal matters. A number of regional initiatives were referred to, including efforts to harmonize national legislation through regional treaties.

IV. SUMMARY OF THE DISCUSSION

20. The participants discussed the topics below, which had been provided as objectives in the background and concept paper and included in the agenda.

A. Internationally recognized elements of environmental crime

21. The discussion of the topic "Internationally recognized elements of environmental crime" focused on the identification of the basic elements of environmental crime that would be internationally recognized as such.

22. It was suggested that an environmental crime should be viewed as having three components: (a) the mental element (mens rea), whether intentional, reckless or negligent; (b) the commission or omission (actus reus); and (c) the form of the crime. Concerning the mental element, it was noted by a number of experts that there seemed to be general agreement internationally that either intention or recklessness was required to constitute a crime. However, there was less international agreement on the extent to which negligence was criminal, unless it related to failure to comply with an administrative requirement that had penal sanctions attached to it.

23. Experts discussed the values that should be defended by criminal law, and whether the values applied to all or part of the ecosystem. In this context, a number of experts emphasized that harm or endangerment, whether in the long or short term, of environmental media such as water, soil and air, as well as endangered wildlife, should be prohibited.

24. It was suggested that the following categories of offences should be recognized by Member States and the United Nations: (a) offences with transboundary effects (or possible effects) on the world, such as greenhouse effects; (b) offences affecting countries other than the one in which they were committed; and (c) conduct that should be considered an offence in every country.

25. It was also suggested that besides considering the elements of an offence, also its transnational nature should be considered and related to harm to specific parts of the environment, whether actual harm or a risk thereof (concrete danger). The illegal disposal and importation or exportation of hazardous substances were cited as examples of transnational crimes, in contrast to commonly occurring national environmental offences, such as littering.

26. It was noted that examples of the objective characteristics of environmental crime might include: (a) failure to notify authorities of, for example, an oil spill or a nuclear accident; (b) failure to obtain a permit; (c) failure to clean industrial water before releasing it into a stream or lake; and (d) failure to build an industrial chimney of less than a prescribed height.

27. Reasonableness, foreseeability and necessity should be considered in determining whether offences are committed and there should be a balancing of interests between a clean environment and the need for industrial development. The public perception of environmental crimes being not really crimes, but lesser, "white-collar" offences, should be changed.

B. Forms of transnational environmental crime

28. With reference to principle 15 of the Rio Declaration on Environment and Development[3] (the "precautionary principle"), it was considered that the preventive aspect of environmental offences was useful. In that respect, offences could be grouped into three categories: (a) those affecting the global commons (res communis), such as the trade in endangered species, ozone depletion, climate change, dumping into oceans, and the pollution of international lakes and rivers; (b) those affecting other countries, for example, the trade in toxic wastes that is prohibited or controlled by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and by the Bamako Convention on the Ban of the Import of All Forms of Hazardous Wastes into Africa and the Control of Transboundary Movements of such Wastes Generated in Africa; and (c) methods of warfare damaging the environment of an enemy country, for example, in Kuwait in 1991, which, in the view of one observer, was environmental terrorism in wartime and was prohibited by the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international conflicts (Protocol I), adopted at Geneva on 8 June 1977.[4]

29. It was also suggested that transnational environmental crime should be linked to specific international conventions such as the Basel Convention. It was generally agreed, however, that acts that complied with environmental conventions but fell into one of the above categories such as emission of gases within the limits of the convention on ozone depletion, could not be seen as crimes.

30. The linkages between economic development and environmental crimes were fundamental issues that should be emphasized by reference to particular cases, namely the export of hazardous waste by large corporate entities from certain developed countries to developing countries. In one case, for example, the financial incentive was so great to a developing country that it had agreed to accept 15 million tonnes of such waste over five years at 40 United States dollars per tonne. The total sum was far in excess of its gross national product. It was only when that transaction became public knowledge that there was uproar and the contract was abandoned. That and similar cases raised grave concerns not only for the environment, but also for the lives and health of present and future generations. They involved several transnational crimes, including corruption of government officials, ecocide and genocide, all of which would have to be considered international crimes. It was suggested that there was a great need for a third party to identify such situations, which were not uncommon.

31. In this context, reference was made to the idea of a "legally sanctioned crime", that is, a crime that was not legally punishable and was still regarded as a "price of development". One example cited involved pesticides that were banned in some countries and exported to others for use in agricultural operations. Pesticide run-off contaminated drinking-water sources, causing serious illness in communities that were dependent on those water supplies.

32. In such cases, it was agreed that, subject to the relevant international conventions, Member States should consider enacting legislation prohibiting and introducing sanctions against the export of products that had been banned. It was also recommended that Member States should consider banning the production and importation of dangerous materials, unless sufficient precautionary measures could be taken in respect of their use, treatment or disposal.

C. Forms of international cooperation

33. It was noted that specific forms of currently existing international cooperation should first be identified at different levels of the administrative, civil and criminal justice systems, giving examples of cooperation at the administrative level, the police level (such as cooperation involving the International Criminal Police Organization (ICPO/Interpol)) and at the judicial level.

34. The Model Treaty on Extradition (General Assembly resolution 45/116, annex, of 14 December 1990), the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex, of 14 December 1990) and the Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution 45/118, annex, of 14 December 1990) were cited as means of international cooperation. Other examples included the bilateral and multilateral agreements and model instruments, including the European Convention on the Transfer of Proceedings in Criminal Matters, as well as other existing agreements on the reciprocal enforcement of judgements, mutual assistance in legal matters, rogatory commissions and reciprocal enforcement treaties on the summoning of witnesses. Another important example given was the administrative cooperation in cross-border investigation of crimes that currently existed between certain neighbouring countries in one region.

D. Approaches to furthering cooperation

35. Several proposals were made during the discussion on approaches to furthering cooperation, including (a) the lowering of prerequisites for mutual legal assistance for both criminal and administrative offences; (b) the facilitation of the gathering and use of evidence; (c) changes in the realm of corporate criminal liability where there were fundamental differences between countries with common law systems and those with civil law systems; (d) a commonly agreed list of environmental offences; (e) rogatory commissions whose jurisdiction could be expanded to include environmental crimes; and (f) the development of model national legislation, so that States could arrive at a common understanding of what constituted an environmental offence.

36. The theory of "ubiquity" was highlighted as an area of difficulty for transboundary crime. Common law countries required all elements of the crime to be present within one jurisdiction, which was often not the case. It was also explained that in common law jurisdictions it was possible for legislation to define crimes so as to avoid that limitation.

37. It was suggested that a database could be created by an international entity, such as the United Nations Environment Programme (UNEP) or the United Nations Interregional Crime and Justice Research Institute, on relevant national legislation and case law, as well as an international register of crimes and criminals, with names and photographs being provided by ICPO/Interpol. That might be useful, for example, in respect of the trade in endangered species.

38. In this and similar matters, cooperation with UNEP was essential. It was also recommended that the Crime Prevention and Criminal Justice Branch should do further work in researching and defining other forms of bilateral and multilateral cooperation and should make the results available to interested Member States.

E. Obstacles to the application and use of criminal law in protecting the environment and approaches to overcoming them

39. The mix of criminal law and administrative sanctions constituted an obstacle to the application and use of criminal law in protecting the environment. Administrative law could become an obstacle to the use of criminal law in many cases, especially if there was a close dependence of the latter on administrative decisions.

40. Lengthy delays, often as long as 10-15 years, were reported in some countries with respect to cases coming to final judgement. Prosecutions and trials should be expedited. Various schemes were being tried in several countries to reduce court delays to a minimum; such schemes included alternative dispute resolution, arbitration and the practices of "plea bargaining" and "transactions". It was noted that specially designated courts were not generally used in criminal matters. The judiciary in the ordinary courts of criminal jurisdiction would probably not support giving penal powers to specialized courts, and it might be inconsistent with constitutional law and fundamental rights in many countries. However, there was some merit to the idea of having specialized divisions of ordinary courts to adjudicate environmental crimes.

41. Another obstacle was the application of limitation periods to prosecutions, especially where a distinction was made between minor offences (misdemeanours, summary offences) and serious crimes (felonies, criminal offences). Minor offences could have very short limitation periods and, in some jurisdictions, even serious crimes had limitation periods.

42. Another obstacle was the lack or failure of inter-agency cooperation. Various agencies existed at the national level that often worked at cross purposes. It was suggested that administrative agencies should be involved not only at the enforcement stage, but also at the legislation preparation and regulation stages, in order to avoid some of the inconsistencies in the administrative and criminal law systems.

43. Other problems included lack of awareness of the environmental dangers of some products. In that area, courses could be given to criminal justice officials, including investigators, prosecutors and judges.

44. It was proposed that an obligation to repair the damage done to the environment should be included as a criminal sanction, as was done in a certain developed country. It was also suggested that the possibility of Member States allowing certain registered associations for the protection of nature and the environment to initiate proceedings under certain circumstances should be considered. After some discussion on the proper role of criminal law and the difficult civil liability questions that would come up in such penal proceedings and that criminal courts were not equipped to resolve, participants were generally of the view that the current system of independent civil actions for compensation should not be departed from.

F. Incorporation of environmental crime prevention in technical agreements and methods of achieving that objective

45. Economic development and environmental protection were closely intertwined, as illustrated by the export of environmental clean-up expertise or other expert knowledge.

46. Other examples of technical cooperation included education, training courses and technical assistance, as noted in a study by the United Nations Interregional Crime and Justice Research Institute and the Australian Institute of Criminology on sanctioning strategies and sustainable development.[5] In supporting those proposals, one expert called for the development of national training centres to ensure that countries would be able to control imported substances, as the dangerousness of such substances was often hidden by improper or fraudulent classification and description of products. Other experts urged United Nations entities to do their part to ensure that developing countries were not harmed.

47. The participants discussed the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex, of 29 November 1985), which included articles on victims of crime and abuse of power, restitution, compensation and access to justice. According to article 10 of the Declaration, in cases of substantial harm to the environment, wherever

such harm resulted in the dislocation of a community, restitution should include restoration of the environment. It was suggested that such a remedy should be established and strengthened, and the provision of funds for that purpose should be promoted, also with the assistance of the international community. However, some experts had difficulties with respect to the idea of empowering criminal courts to award compensation to victims because, if they were part of a system of criminal sanctions, the compensation awards would be regarded as additional punishment. Even in jurisdictions where such compensation provisions existed within the penal system, they were resorted to only where summary awards could be made by the courts.

48. Experts recommended that States should consider supporting the establishment of an international criminal court to prosecute international crimes, including environmental crimes. In this connection, States should support the work of the International Law Commission in further refining the concept of environmental crimes in the draft Code of Crimes against the Peace and Security of Mankind.[6] It was noted that there were non-governmental initiatives concerning the creation of an international criminal court for the protection of the environment, such as the proposal presented to the United Nations Conference on Environment and Development by the International Association of Environmental Lawyers, which would be discussed at a conference to be held at Venice in July 1994. A resolution to the same effect had also been adopted by the fourteenth International Congress on Penal Law, organized by the International Association of Penal Law. While there was general agreement about the merits of an international criminal court, some experts expressed reservations because of implementation difficulties. One expert suggested that the matter should be dealt with in tandem with national legislation.

49. Another dimension to be addressed was proper implementation of the recommendations contained in Agenda 21, which gave an important role to non-governmental agencies. The Earth Council, referred to in chapter 38 of Agenda 21,[3] was developing alternative mechanisms for resolving disputes in the area of redress of environmental harms (other than prosecutions) and could function as an ombudsman.

Notes

[1]Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.2.

[2]Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex II, chap. 8, sect. B.

[3]Ibid., annex I.

[4]United Nations, Treaty Series, vol. 1125, No. 175/2.

[5]Environmental Crime, Sanctioning Strategies and Sustainable Development (UNICRI 49).

[6]See Official Records of the General Assembly, Forty-eighth Session, Supplement No. 10 (A/48/10), chap. II.

Appendix

LIST OF PARTICIPANTS

Experts

Gilles Aubry, Chief Commissioner, Deputy Chief of the 6th Division of Criminal Affairs, France

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Vinod Kumar Jain, Special Secretary, Internal Security and Police, Ministry of Home Affairs, India

Arkadiy Yakovich Kitesov, Deputy Head, Department on Fight against Organized Crime, Ministry of Interior, Ukraine

Benjamin P. Kubo, Solicitor-General, Attorney General's Chambers, Kenya

Joaquén Martin Canivell, Magistrate in Penal Law, Supreme Court of Spain

Manfred Moehrenschlager, Minister Counsellor, Federal Ministry of Justice, Germany

Wessel Mulder, First Secretary, Permanent Mission of South Africa to the United Nations Office at Vienna

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United Nations bodies and affiliated institutes

United Nations Interregional Crime and Justice Research Institute

European Institute for Crime Prevention and Control, affiliated with the United Nations

International Centre for Criminal Law Reform and Criminal Justice Policy

International Scientific and Professional Advisory Council

Non-governmental organizations

International Association of Penal Law

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REVIEW OF PRIORITY THEMES, IN ACCORDANCE WITH COMMISSION RESOLUTION 1/1 ON STRATEGIC MANAGEMENT BY THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE OF THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME

Status of preparations for the World Ministerial Conference on Organized Transnational Crime

Report of the Secretary-General

Addendum

Conclusions and recommendations of the meeting of the Ad Hoc Expert Group on Managing the Risk of Violence in a Criminal Justice System: a Framework of Analysis, held at Chicago, United States of America, from 18 to 20 August 1993

The Secretary-General has the honour to submit to the Commission on Crime Prevention and Criminal Justice the conclusions and recommendations of the meeting of the Ad Hoc Expert Group on Managing the Risk of Violence in a Criminal Justice System: a Framework of Analysis, held at Chicago, United States of America, from 18 to 20 August 1993 (see annex).

*E/CN.15/1994/1.

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Annex

CONCLUSIONS AND RECOMMENDATIONS OF THE MEETING OF THE AD HOC EXPERT GROUP ON MANAGING THE RISK OF VIOLENCE IN A CRIMINAL JUSTICE SYSTEM: A FRAMEWORK OF ANALYSIS, HELD AT CHICAGO, UNITED STATES OF AMERICA, FROM 18 TO 20 AUGUST 1993

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INTRODUCTION

1. The Economic and Social Council, in its resolution 1992/22, section VI, of 30 July 1992, determined that one of the priority themes to guide the work of the Commission on Crime Prevention and Criminal Justice would include national and transnational crime, organized crime and economic crime, including money-laundering.

2. Furthermore, in its resolution 1992/23 of 30 July 1992, the Council requested the Secretary-General to continue the analysis of information on the impact of organized criminal activities upon society at large, including data on the nature, extent, forms and dimensions of organized crime, and on legislative measures. In the same resolution, the Council took note of the practical measures against organized crime formulated by the International Seminar on Organized Crime, held at Suzdal, Russian Federation, from 21 to 25 October 1991, and offered them for consideration by Governments in their efforts to enhance the struggle against organized crime. In paragraph 33 of its practical measures, contained in annex II to Council resolution 1992/23, the Seminar emphasized the importance of the protection of witnesses in combating organized crime, recommending that national criminal justice systems should pay close attention to provisions, programmes and any legislation aimed at providing for the security of witnesses.

3. The protection of victims has long been a matter of concern for the international community, as well as for national criminal justice systems. A special class of victims are those who assist and contribute to the criminal justice process, including judges, jurors, prosecutors and witnesses. Any assault on such persons is a challenge to the ability of a Government to exercise its responsibilities, and it demands a measured response. Since the most dramatic challenges to criminal justice systems are posed by organized crime and terrorism, it follows that the protection of judges, jurors, prosecutors and witnesses is essential to the prevention and control of serious crime. While global statistical data are not available on the types and motivations of attacks on criminal justice systems, violence from disappointed litigants, fanatics and mentally disturbed persons must also be considered in this context.

4. The conclusions and recommendations presented below are intended for authorities charged with protecting criminal justice systems from intimidation or violence. Their purpose is to offer concepts, considerations and an analytical framework usable in any society to protect the functioning of its system. By "system" is meant the persons, institutions and structures involved in the mission of investigating, charging and adjudicating criminal cases.

5. An initial assumption is that no matter how much money, human resources or equipment is committed to a programme, there can be no guarantee of total security. Even maximum application of every useful idea contained in the conclusions and recommendations below can only reduce the degree of external risk to the integrity and safety of a system and its participants. Moreover, the transfer of mechanisms of security developed to serve one society or culture carries no guarantee of success when applied to another.

6. The conclusions and recommendations presented below offer no panaceas, but rather a method by which to evaluate and manage risk factors, which, it is hoped, will have cross-cultural utility. This method of risk management is intended to provide a general theory or framework with which policy makers and programme managers in diverse societies can analyse the types of threats to the functioning of their criminal justice systems and can design disincentives to those threats appropriate to their own cultures.

7. Every society faces threats from different persons and groups to the functioning of its criminal justice system. The factors that encourage those persons to attempt to interfere with the system, or that

furnish disincentives to such interference, may be similar or vastly different in various systems. However, the universality of human nature makes it worthwhile everywhere to analyse the functioning of a criminal justice system to identify how to create disincentives to attempted interference with it, by minimizing the results of any interference and by maximizing the costs to the criminal and the difficulty involved in any such attempt.

8. Similarly, the bureaucratic and budgetary reality of limited resources dictates the need for a rational process to determine the level of resources necessary to permit the functioning of a criminal justice system without undue interference, and to allocate such resources. A risk management strategy is intended to provide a process of identifying threats, examining vulnerabilities, and designing disincentives to interference, without attempting to impose culture-bound solutions of any particular country or approach.

9. The conclusions and recommendations presented below deal with the types of threats to be guarded against in risk management, including emotional and/or irrational, symbolic, case-specific (or systemic) and exemplary (or deterrent) violence; the practical requirements for making and implementing an intelligent threat assessment in individual situations and in categories of situations; the functioning of the authority that makes such assessments and the relationship between assessments and resource allocations; appropriate responses, including the categories of awareness programmes, site hardening, personal protection and intelligence; and the need for data collection and research, and the policy consequences of adopting a risk management philosophy for a criminal justice system.

I. RISK AND GENERAL CHARACTERISTICS OF THE SYSTEM

10. Risk management should logically begin with an examination of the prosecutorial and judicial system from the point of view of why a potential attacker feels that an attempt to disrupt the system, by threatening or assaulting a judicial officer, prosecutor or witness, will benefit his or her cause. The level of risk is a function of the ease and effectiveness of threats and violence in interfering with the functioning of the system, the anticipated probability and severity of sanctions, and sometimes the perception by the criminal actors of the fairness or injustice of the system.

11. In the terminology of economic analysis, the decision by the criminal on whether or not to use violence or threats against an individual representative of the judiciary, prosecution or police, or against a citizen who may be able to furnish incriminating evidence as a witness, is normally determined by a conscious or unconscious, instinctive cost-benefit analysis of the violence or threat transaction, that is, whether the contemplated threat or attack will yield a result that is worth the possibility of counteraction.

12. Illogical factors certainly may intrude on this calculation, such as obsessive hatred by a gang boss for an official who poses little objective threat, which causes the boss to order a high-risk assassination attempt. Nevertheless, common experience and common sense dictate that the danger of interference with the functioning of the criminal justice system and the level of personal risk increase with factors such as the ease of inflicting violence and escaping detection, and the probability that such action will succeed in obstructing the function of the system.

13. Conversely, factors that make detection and punishment for threats or violence more probable or render such acts unproductive because the system functions to overcome them serve to decrease the incentive for violence. Other factors, such as the severity of sanctions, may have dual effects, increasing the incentive to interfere with the system when previous crimes of this type have remained unpunished, but serving as a deterrent when heavy sanctions are effectively applied.

14. Simply stated, the way a criminal justice system is structured and how it functions must be analysed to know what makes it vulnerable or resistant to improper influences. This evaluation should result in strengthening weak links in the chain before they are attacked, whether by new laws to protect witnesses, changes in trial procedure or simply by provision of necessary resources. Through this evaluation process disincentives can also be designed.

15. Some conceptual distinctions should be made about the forms of violence confronting a criminal justice system. They can be classified into four distinct types, differentiated according to their motivations:

(a) Emotional or irrational violence, which is typically associated with the assertion of the authority of the criminal justice system over a person, who reacts with violence because of the stress involved or because of psychological instability: The courtroom is an inherently dangerous workplace, as are police stations, prosecutors' offices and other places where decisions of great significance to the persons affected are being made, decisions affecting their liberty, property and dignity. This environment and process place persons under tremendous stress, and that stress can easily explode in unpredictable, often spontaneous, violence. The types of security measures that protect the criminal justice system from emotional and irrational violence also serve as basic precautions against the more premeditated types of violence. Consequently, the capacity to control emotional or irrational violence directed against representatives of public authority should be considered an essential part of criminal justice system management;

(b) Symbolic violence, victimization of a person because of the authority figure that he or she represents: Thus, terrorists attack judges because of their status as symbols of state authority, just as ambassadors are at risk in foreign countries because they represent their countries;

(c) Case-specific (or systemic) violence, a premeditated attack upon a person because of the function he or she performs in a particular case or context, commonly directed towards witnesses or other participants in the system because of their roles in a particular case: Thus, a prosecutor or a policeman who is investigating a particular case may be threatened or attacked to discourage or eliminate interference with criminal profits and the threat of ultimate prosecution and conviction that he or she creates;

(d) Exemplary (or deterrent) violence, a mixture of symbolic violence and case-specific (or systemic) violence: Whereas case-specific violence relates to an ongoing or anticipated investigation or prosecution, exemplary violence is used to deter future cooperation against the criminal group seeking to protect its activities. A witness or his or her relative may be killed in order to show future potential witnesses the consequences of furnishing evidence.

16. Symbolic violence, case-specific (or systemic) and exemplary (or deterrent) violence normally occur as a result of at least an unconscious cost-benefit analysis, making it useful to devise strategies to remove incentives for and vulnerabilities to threats. Factors that increase or decrease the risk with respect to various actors in the system (e.g. judges, jurors or laymen, prosecutors and investigating magistrates, police and witnesses) are considered below.

17. The risk of violence against judges is connected to the symbolic value of the office and of the individual, that is, visibility, whether the decision-making process is collegial or monocratic, and the amount of discretion exercised.

18. Since ancient times, the figure of a judge has always embodied the concept of state authority. As a consequence, whenever a politically dissatisfied group chooses to express its rejection of state authority

by violence against the symbols of that authority, the judiciary is at risk. Purely random violence against the judiciary would be terribly difficult to counteract; in Italy, for example, there are approximately 8,000 members of the magistrature (a constitutional institution that includes prosecutors, preliminary hearing judges and trial and appeals judges), and in the United States of America, with its greater population and separate federal and state judicial systems, there is a correspondingly higher number. Although such random violence is not unknown, a motive or pattern can usually be ascertained for most threats or attacks.

19. The most obvious factor that tends to personalize a radical group's anti-authoritarian animus and focus it on an individual is that individual's public actions or public statements. For a judge, the most probable cause of risk is personal involvement in a proceeding against persons with whom the terrorist group feels solidarity. Violence rather than threats are far more likely to result from an exercise of past authority, as there is no particular future action to influence or deter by means of a threat.

20. When terrorist groups threaten a judge, their motivation is usually connected to an ongoing action in which the judge can be publicly intimidated into abandoning his or her public function. Thus, threats by terrorists may be directed not only against a presiding judge but also against lay judges and any representative of the state who exercises a significant function, in order to intimidate them in discharging their duties and thereby obstruct the functioning of the system.

21. Organized crime groups are more likely to seek a corrupt exercise of judicial discretion, procured and conducted covertly. The desire of organized crime to gain corrupt advantage by its threats depends on finding a judge or other official who can be influenced in the exercise of substantial power of discretion, and may begin with efforts to corrupt and then progress to threats and violence. An unreviewable exercise of discretion is an invitation to efforts to corrupt or intimidate. A legal system that allows a sentencing judge to impose a wide range of possible sanctions without any need to justify the sentence imposed, or without any appellate accountability for the sentence, leaves space for corruption or intimidation. A sentencing regime in which clear, easily applied guidelines limit judicial discretion to a narrow range and allow or require a review of the sentence, however, reduce the possible effectiveness of threats.

22. The physical elimination of a judge can be a consequence of a past official action and can thus intimidate future action by other judges. Assassination can also be future-directed, in order to prevent the conduct of a trial or the imposition of a sentence. Judges who perform a monocratic, that is a peculiarly individual, not easily substitutable function are more at risk for this motive than are judges who work in a panel or in a collegial manner. Similarly, judicial bodies that function under the principle of unanimity, as do federal juries in the United States, are vulnerable to the intimidation (or bribery) of only one member, whereas bodies that function according to a majority principle are far more resistant to corrupting influences.

23. Adoption of various forms of identity protection or anonymity to protect judges and jurors has limited utility. Colombia is experimenting with anonymous judges in a defined category of high-risk cases, although it is not known how successfully a judicial establishment can maintain the necessary level of secrecy. Other countries might encounter constitutional problems with such a system. However, the use of juries in which the members are identified only by number rather than by name has been allowed in United States courts.

24. The risk of violence against prosecutors and investigative magistrates is connected to the visibility of the prosecutor, his or her unique qualifications as opposed to system-wide qualification, the ease of replacement and sharing of responsibility and information, and the allocation of functions and risks between prosecutors and police, and between prosecutors and judges.

25. Because their work is inherently newsworthy, prosecutors and investigative magistrates are the focus of public and news media attention. They frequently become the symbolic figureheads of controversial or dangerous investigations, sometimes against their will. If a prosecutor is politically or personally motivated to claim public attention, it is logical to assume that the likelihood of symbolic violence will be increased. Prosecutors and investigating magistrates, and the public, should therefore recognize that encouragement of personal publicity creates risks and costs that might otherwise be avoided.

26. The experience of the pool of anti-mafia investigating magistrates at Palermo has suggested that a collegial rather than an individual method of acquiring and utilizing evidentiary information also reduces the perception of risk by the individual magistrate and that, when a tragedy occurs, interference with the functioning of the system is significantly reduced. Logically, the incentive to kill a prosecutor or investigative magistrate is high when that person has a unique capability to gather and assemble information and evidence, and to organize and initiate prosecutive action. When a number of persons contribute to those functions by sharing responsibility and information, the removal of any one of them is less significant.

27. That observation is linked closely to the relationship between risk and the unique individual qualifications and contributions of prosecutors and investigating magistrates. If only one person among those who may potentially carry on an investigation or prosecution or otherwise threaten some criminal interests or organizations has the motivation and ability to effectively carry out the function and cannot readily be replaced, that person is a target against which it is cost-effective to concentrate threats and attempts.

28. The equation changes, however, if the personnel system is full of highly motivated and qualified persons who are perhaps irrationally but idealistically motivated to carry on the work of a murdered colleague. The criminal group must take into consideration the necessity to successfully kill not one but more magistrates in an effort to disrupt the unwelcome investigations and prosecutions, measured against the increased risk stemming from having to organize and execute multiple attacks and from the adverse governmental and public reaction.

29. Where the risks fall in a given sector of the criminal justice system, that is, on judges, prosecutors or the police, depends very much on how that system allocates functions and the attendant risks. For example, before the 1989 revision of the Italian Code of Criminal Procedure, a prosecutor played a less important role in developing evidence and guiding investigations than did the giudice istruttore, a form of investigating magistrate. Currently, the task of guiding inquiries by the police agencies and directly conducting interrogations is much more the province of the pubblico ministero, or prosecutor. Consequently, the risk factor is now largely transferred to the pubblico ministero.

30. The common law English prosecutorial tradition has no counterpart of the code provisions in civil law countries obligating the police to report all crimes to the prosecutor and to thereafter execute all investigative directions from the prosecutor or inquiring magistrate. English and United States police have historically been the principal actors in the collection of evidence, often bringing a case file to the prosecutor only when the investigators have decided that the evidence is complete and the case is ready for trial.

31. While that police-prosecutor relationship is steadily evolving in the direction of greater prosecutorial participation and influence, it may serve to explain why relatively few common law prosecutors have been the subjects of threats or violence.

32. The risk of violence against police is influenced by their normally strong institutional, rather than individualistic, practices and their ability to respond to threats and violence.

33. In many countries, there is a strong tradition of personal independence, often having constitutional foundations, for the judiciary and even prosecutors. This independence, when it means that the individual has a monopoly of information that can be destroyed by an assassination, makes the judge or prosecutor an attractive target. Well-managed, modern police and investigative agencies are more collectively or hierarchically oriented, according to a structure in which the individual is subordinated to the good of the whole. Sources of information are regarded as assets of the organization rather than of the individual, even though access to those assets is controlled on a "need-to-know" principle. Information is regularly reduced to documentary form, subject to retrieval and availability to authorized persons. Investigative initiatives are undertaken with managerial authorization, after collegial planning, and not as individual adventures.

34. Good police organizations do not tolerate the undisciplined, individualistic behaviour of television and film detectives. Accordingly, investigators in such departments are not subject to the risks of planned violence to the extent depicted in the media, although the danger of reactive violence in operational situations is always present. A high level of violence directed against the police may, therefore, indicate a less than optimally organized and managed department, where police officers become targeted as individuals - rather than being protected by personnel rotation, division of tasks to spread responsibility, and other depersonalizing strategies - and attackers are encouraged to react to the perception of an individual, rather than an institutional, menace.

35. As was the case with prosecutors, there is also a trade-off between the accomplishments that can be achieved by one highly qualified and aggressive individual and the resulting concentration of risk and increase in vulnerability of the system to interference. When only one police officer is sufficiently motivated and able to pose a threat to a criminal organization, the risk factor rises. When there are numerous ready replacements who pose a comparable risk to criminals, the motivation for threats and violence is reduced. This suggests that, from the viewpoint of resistance to interference, it is more important to organize and train a unit to a high average level of accomplishment, with substantial division of responsibility, rather than concentrating responsibility and accomplishments in the person of one outstanding individual. Even with such a policy of spreading the risk, a symbolic assassination may still occur because it can serve to lower overall motivation levels. However, at least the incentive for such an attack is reduced when it will have only marginal impact in a specific case or on a particular systemic function.

36. The police is the agency best equipped to respond to gang or terrorist violence. Judges and prosecutors have relatively limited and largely reactive areas of legal discretion. The police, however, is a multifunctional institution, often a large and complex organization, in which many activities are discretionary. If a drug gang threatens a police agent, the commanding officer can normally exercise a largely unreviewable discretion in assigning, for example, both drug law enforcement and routine patrol resources to the market area controlled by that gang until the economic and personal disadvantages of threatening the police become obvious. However, experience in some countries has shown that this unreviewable discretion can lead to practices that are unacceptable. Although any properly motivated law enforcement organization would quickly identify and take action against any form of "private justice", there have been cases where the police have taken revenge when they experienced violence against their ranks from criminal or subversive groups.

37. The risk of violence against witnesses is influenced by the usability of evidence collected before trial, the legal consequences of a witness changing his or her story, the evidentiary alternatives to witness testimony, and the use of physical protection and anonymity to safeguard witnesses. Threats

and violence against witnesses are probably the most common means of attacking the criminal justice system, as witnesses are normally unarmed, unprotected and readily found by the criminal and often have limited social, economic and educational resources.

38. Witness protection programmes, which rely on physical protection when necessary but may emphasize anonymity through relocation and the creation of a new identity, function well when it is cost-effective and feasible for the government to assume the responsibility of the entire family group that may be subject to retaliation and when the economic and social circumstances of the witness make this an attractive option. Generally, relocation works best when it represents a net improvement in the social and economic prospects of a witness and of his or her family, which is typically true only of the less fortunate members of society.

39. At least one country is also experimenting with the use of anonymous witnesses, whose identities are not revealed to the defence counsel. This practice raises obvious concerns about the ability of a defendant to test the accuracy and reliability of witness testimony, and will have limited application in most legal systems.

40. A dilemma frequently encountered is the conflict between the desirability of recording the testimony of a witness in a usable evidentiary form, before an assassination or threat takes place, and the preference for oral testimony and confrontation by an attorney for the accused, before permitting any testimony or statement to be relied upon as a form of proof. Several legal systems adjust the competing interests by allowing prior judicial declarations as evidence if there is a demonstrated need, and the testimony, when given, was subject to cross examination, as in a previous hearing or trial, or if there are other satisfactory guarantees of trustworthiness.

41. Another common problem is the witness who incriminates an accused and then tells a different story, after being threatened. Partial corrective measures are sanctions for telling contradictory stories, even if it cannot be proved which one is correct, and the ability of the court to choose the first statement as constituting a more truthful account, if the witness fails to give a convincing explanation for having changed the testimony.

42. From a strategic point of view, the importance of individual witnesses can be diminished by emphasizing alternative methods of proof, such as scientific evidence and the use of evidence gathered by electronic surveillance. For example, an unsophisticated approach to the investigation of a criminal or terrorist organization might focus on investigating and gaining the cooperation of one marginal member of the gang and then on commencing a prosecution based on the perhaps partial knowledge of that person, whose continued safety and cooperation would then be absolutely essential to the prosecution. A more sophisticated approach might involve using the information gained from the cooperation of that one marginal member to persuade the proper legal authority of the necessity and appropriateness of placing an entire series of listening devices, deliberately focusing on tracing activities through the layers of insulation characterizing the gang, while corroborating the electronic surveillance evidence with physical surveillance, and culminating with exhaustive seizures of incriminating and corroborating objects. An overwhelming case can thus be built, without having to rely on the perhaps weak testimony of the initial witness, with the synergetic result of producing even better witnesses than the one who originally cooperated, as more gang members would cooperate in the face of almost certain conviction, furnishing testimony well supported by the electronic surveillance and other investigative techniques.

II. RISK MANAGEMENT FOR JUDICIAL AND PROSECUTORIAL OFFICERS

43. High-risk factors include high visibility, a unique or essential role in the process and the ability to exercise great discretion. Risk is reduced by anonymity, divided responsibility, substitutability and reduced discretion. Policy makers charged with the responsibility of planning the protection of judicial or prosecutorial officials have numerous courses of action available, only some of which may be feasible, however, because of cost, political or personal considerations. These alternative options or courses of action may generally be grouped in at least four categories, which are primarily applicable to the main actors of the criminal justice system: awareness programmes, site hardening, personal protection and intelligence.

44. Awareness programmes require the person to be protected to realize that personal safety is ultimately an individual's own responsibility. A person must not allow himself or herself to become entirely dependent on alarms, bodyguards or physical barriers to ensure personal safety. When a judicial officer or prosecutor feels that he or she may be the target of violence, bodyguards, armoured vehicles, and security surveys and precautions at his or her residence and office become valuable tools in the effort to reduce the assault possibilities. All of these proactive efforts should be considered and appropriately used when available. However, these efforts are costly and may not always be available, particularly for those who are at comparatively low risk.

45. The single most effective personal protective measure lies in the potential target. The key is vigilance. A person who is a potential target must maintain an attitude of safety awareness, which can be incorporated into his or her professional, social and personal life at little cost and is a prerequisite for an effective personal security plan.

46. There is much that prospective targets can do with little effort or financial cost to reduce their chances of becoming victims of hostile action. Remaining alert and cognizant of the surroundings can literally save a person's life. Security specialists can study past assaults for motives and methods of attack and communicate valuable proactive habits to prospective targets.

47. Site hardening can be defined as protective activities surrounding any structure that has been identified as a potential attack site. It involves not only enhancements to the perimeter of the structure, but also control of the movement of individuals within the structure. Generally, the workplace and residence of a person who is a potential target are the safest places for him or her to be. Familiarity, management, access control and permanency are in the person's favour. These advantages can be reinforced by site-hardening enhancements and activities such as the following:

(a) Changing a residence to a more secure building or location, which may be desirable for security reasons but prohibitive from the point of view of the cost and disruption involved;

(b) Controlling entry to the site by the use of fences, window and door security systems and structural enhancements to restrict the movement of vehicles towards the structure;

(c) Enhancing access control at the points of entry to the structure using not only controls by security personnel, but also magnetometers, X-ray machines, thermal neutron analysis systems, explosive-detecting canines, interview and profiling techniques and areas set off for full body searches;

(d) Establishing security programmes where not only all incoming mail, but also all other supplies and materials being delivered or introduced into the structure are subjected to thorough examination for potential explosives or weapons;

(e) Setting up secondary perimeters within the subject building, re-examining individuals as they enter certain offices or courtrooms;

(f) Establishing barriers of bomb resistant and/or bulletproof material, in order to protect specific areas within offices or courtrooms, including saferooms;

(g) Establishing programmes where on-duty response personnel, some with sophisticated equipment and a high level of training, are available within targeted structures for immediate response to a location of concern;

(h) Testing and verifying the activities listed above on a regular basis, with awards and sanctions being applied and levels of alertness maintained in order to ensure effectiveness.

48. Personal protection obviously overlaps the activities enhancing the security of the targeted individual within a site-hardened location. By "personal protection", however, is meant the individuals and procedures that move with the targeted individual, not only within the site-hardened structure but also throughout the community. The probability of an attack is based on time, place and level of difficulty, which an attacker seeks to have in his or her favour. If any of these are not conducive to a successful assault, the attacker may withdraw permanently or temporarily. The probability of an assault can be reduced by conscientiously applying the following defensive tactics and assets:

(a) Trained, armed and appropriately equipped bodyguards who move with the targeted person wherever he or she may go;

(b) Bullet-resistant and explosive-resistant vehicles that can be used to transport the targeted person;

(c) Sophisticated and encrypted communication capabilities that allow protective personnel to communicate not only among themselves, but also with other entities that could respond to their needs;

(d) Avoidance of predictable behaviour; alteration of times, travel routes and business and personal routines, as well as of personalized parking spaces or vehicle plates;

(e) Use of appropriate surveillance detection techniques and constant awareness of the targeted person's environment, particularly vehicles or persons lingering near his or her residence or office or following his or her movements;

(f) Knowledge of and training with evasive procedures, including knowing how to handle a vehicle in emergencies and to respond immediately when evasive action is appropriate;

(g) Movements and practices designed to enhance the anonymity of the potentially targeted person;

(h) Personal protective wear (body armour) in certain situations.

49. Intelligence is the fourth area of activity involved in the protection of a potentially targeted individual. The personally motivated assailant, pushed by some real or imagined grievance against members of the criminal justice system, may be virtually impossible to identify in advance. However, where the threat to the targeted person is from an established group or organization, there is no better protection than accurate and proactive intelligence activity. The identification of a specific threat is critical to defeating that threat. Active intelligence efforts must be undertaken and must constantly be

coordinated with the protection of targeted individuals. Obviously, the identification and defeat of persons planning an assault or a bombing before the incident occurs are preferable to countering such a plan at a site where a targeted individual is present.

50. Even at the level of the individual, networking or intelligence-gathering can be an effective preventive measure. Neighbours and co-workers can inform a targeted person of information they obtain regarding suspicious activity, inquiries or persons. Critical information should be conveyed to the forces of public order and to any special protective services.

51. Counter-intelligence measures, such as legislation that prohibits the collection of certain types of personal information on defined categories of persons at risk, also merit mention. Thus, physical surveillance of the movements of a judge presiding over an anti-terrorist court might be prohibited, because of the clear and present danger that such surveillance may be a prelude to an attack.

III. RISK MANAGEMENT FOR WITNESSES AND JURORS

52. It is perhaps inevitable that practical efforts to reduce risk to non-professional members of the criminal justice system, that is, witnesses everywhere and jurors in the common law system or lay judges or assessors in civil law systems, will occur in the context of a particular case and will be focused on a particular individual or group. However, these efforts will be of reduced effectiveness if they occur in isolation and are put in place on a piecemeal basis. Effective protection of witnesses and lay judges and/or jurors is complicated and makes a great many demands upon a wide range of criminal justice bodies and other agencies. There is thus a clear benefit to a comprehensive approach and definition of policy, at appropriate levels.

53. Policy issues also arise at the international, national and local levels. Furthermore, there may be a useful role for policy development and coordination at the regional level. Some nations are better placed than others, if only in terms of their national geography, to provide protective arrangements. Where does a threatened witness find sanctuary on the territory of a small island nation?

54. In order to redress these differences, regional and global solutions need to be explored to permit cross-border movement; such solutions involve immigration and other issues of international relevance. These endeavours need to be accompanied by proactive gathering and exchange of information about the threat and to be based on knowledge of laws and administrative arrangements in different jurisdictions.

55. At the national level, there is considerable advantage in cohesive arrangements serving the needs of the entire nation. Centralization reduces the demands upon the diverse resources whose coordination is essential for effective countermeasures. There are examples of effective national programmes implemented by dedicated units, some operating on a statutory basis, that are worthy of study.

56. National law can be an important asset. While it is relatively common to achieve partial identity changes with the cooperation of key agencies, in few jurisdictions is it possible to achieve a complete change of a threatened person's identity without the authority of law. It also seems reasonable and necessary to afford legal indemnity to those agencies and enterprises that assist in this process.

57. National law can enhance the protection of witnesses and jurors by making it an offence to assault, beset or cause damage to property of persons with intent to influence evidence or deliberations. Laws can provide that any crime committed against a witness or juror in connection with a given case should be regarded as an aggravated form of the offence and should attract additional penalty. Another specific

legal provision that may be helpful would be to make it an offence to seek to identify a person whose true identity is being protected by judicial order.

58. With respect to court processes, there are numerous protective measures that can be taken to reduce the vulnerability of witnesses and jurors, such as greater protection of their identity and locations. Technology is aiding these measures (e.g. the use of video link) and a legal framework for such provisions is advantageous.

59. Criteria defined by national law may also determine the categories of persons who may receive protection and under what conditions. It is predictable that serious crimes will attract the greatest resources, but experience suggests that some degree of protection may be relevant in appropriate cases of a lesser crime if a witness is in jeopardy. Experience also suggests that many lesser crimes may cumulatively become a larger problem if potential witnesses do not feel confident to report crimes and give evidence. This malaise is evident in some inner city areas.

IV. POLICY PROCESSES AND RISK ASSESSMENT

60. Every society must deal with the reality of limited resources. A rational process must therefore be developed to determine the level of appropriate resources and to allocate those resources that are actually made available. That process begins with an objective analysis of the risks to be faced, called threat assessment, that sets priorities among the potential targets to be protected and the methods of protection upon which resources should be expended.

61. The threat assessment process should be systemic in nature, taking into consideration all of the elements at risk within the criminal justice system. The ultimate power of decision should rest with the management of the agency having the responsibility to provide protection for these elements. However, provision must be made for active input and participation in the process by those being protected and by those furnishing pertinent intelligence.

62. As a matter of practicality, budgetary decisions are usually made at the political level. Budgetary allocations should, however, be made also at the professional level, after the consultation process described above. In the administrative world, budgets are fixed years in advance. Nevertheless, changing conditions require continuous reappraisal, reaction, and reallocation of priorities and resources, so that the responses of the system are not merely reactive.

63. By this it is meant that the intelligence function and risk analysis must be a continuous, flexible and innovative process in which changes in conditions and newly received intelligence lead to appropriate precautions to prevent tragedy and not simply to increased security for survivors after a witness or judge has been murdered. However, should a tragedy occur, the overriding policy consideration must be that the best deterrent to future assaults is a massive and effective response.

64. As individuals take actions based on their perceived self-interest, they will not act if they do not readily perceive certain attacks as benefiting their cause. As such, it must become an absolute standard operating procedure that all those who attack any of the actors of the criminal justice system have to be identified, apprehended, and brought to justice, no matter what resources must be committed to the task. Such attackers and their associates must contemplate such acts as absolute no-win, and even counterproductive, situations. This is a policy decision that any criminal justice system has a right to demand of its governmental leaders.

V. SUMMARY

65. Any of the actors in criminal justice proceedings can be threatened by violence, which may be emotional or irrational, symbolic, case-specific or exemplary in nature. Protective activities fall under the areas of awareness programmes, site hardening, personal protection and intelligence. A vigilant attitude is an essential prerequisite for an effective personal security plan and can be incorporated into a prospective target's lifestyle, with little effort. Other protective activities can be expensive endeavours: those managing such programmes can maximize cost-effectiveness by planning preventive efforts from the point of view of potential assailants. The attackers' self-interests must be taken into account by the authorities in their strategic planning. If an assault or bombing is committed, it is of critical importance that the perpetrators and their organization be brought to justice, no matter what resources are needed.

66. The actual tactics developed and the distribution of scarce resources should be based on accurate, dynamic and comprehensive threat assessments. By necessity, such distribution will be in measured responses that must be constantly managed so as to stay ahead of the threat, rather than to be reactive to assaults and incidents. That process of rational risk management requires orderly procedures to determine the level of resources necessary to allow a criminal justice system to function without undue threat of interference and to determine their most appropriate allocation. Because other elements of government aggressively compete for those same resources in order to guard their own interests, the crucial question is the p 'itical commitment of the decision makers to provide the resources needed to protect critical elements of the criminal justice system. All must realize that the judicial function of government must go on in a free and open manner. The rule of law is dependent on a secure criminal justice environn Whenever security is lacking, the civilized functioning of society is in jeopardy and violence will prevail.